

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,) File No. 21-cr-108
Plaintiff,) (PAM/TNL)
v.)
Tou Thao(2),) Courtroom 7D
J. Alexander Kueng(3), and) St. Paul, Minnesota
Thomas Kiernan Lane(4),) Monday, January 24, 2022
Defendants.) 9:33 a.m.

BEFORE THE HONORABLE PAUL A. MAGNUSON
UNITED STATES DISTRICT COURT SENIOR JUDGE

(JURY TRIAL PROCEEDINGS - VOLUME III)

Proceedings recorded by mechanical stenography;
transcript produced by computer.

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P R O C E E D I N G S

IN OPEN COURT

(JURY NOT PRESENT)

(Defendants present)

THE COURT: Good morning, everybody. I've got my cheaters with me because reading small type is not my long suit anymore.

I think we have a full complement of jurors, right?

COURTROOM DEPUTY: Mm-hmm.

THE COURT: Good. I think we have all the nervous over the weekend because of the tremendous number of COVID things that had come up over -- just before we started selecting, so that is good.

A couple of communications that I received over the weekend.

Ms. Bell, you wanted me to get a little more specific about the indictment. I don't think I need to do that. I think preliminary is good enough and you guys -- you have opening statements and you have a case, so it will be fine.

I also received a comment relating to potential objections from Exhibits 21 to 35 therein. That's what I'd hoped to have covered last Friday, but I got six pages that said I shouldn't do that, so we'll have to cover those -- I

1 think the term you are using is split screen. We'll cover
2 those as we go, and you can state your objections to it.

3 With respect to the stipulation with other
4 exhibits, I thank you for the stipulation. Counsel, I'll be
5 very candid with you I got much more into football over the
6 weekend then I did dealing with exhibits and stipulations.
7 And so I would say feel completely free with respect to the
8 first 19 that they're going to come in with limiting
9 instruction on the transcripts that are attached to it. The
10 balance of them, we'll probably take one at a time.

11 When we get to openings -- I guess I would be
12 asking if there's an intent by anybody to be using
13 demonstrative exhibits during opening.

14 MS. BELL: Your Honor, for the government, we
15 intended to use basically six slides. One picture is
16 repeated three times. And it is literally just to orient
17 the jury to who -- basically who was where.

18 THE COURT: Who is who?

19 MS. BELL: Who is who.

20 THE COURT: Okay.

21 MS. BELL: It's just who is who. These are from
22 exhibits that were admitted. They are part of that 1
23 through 19.

24 THE COURT: Okay. Let's get specific. What are
25 they?

1 MS. BELL: So, Your Honor --

2 THE COURT: What exhibits are they?

3 MS. BELL: They are from the Milestone camera, so
4 that is Exhibit 14.

5 THE COURT: Okay.

6 MS. BELL: And then they are from -- let me just
7 get the numbers for you. One is from -- two of them are
8 from No. 9 and one is 17. And they are just to orient to
9 who is who.

10 THE COURT: May I ask, did you say No. 9?

11 MS. BELL: No. 9.

12 THE COURT: Okay.

13 MS. BELL: Exhibit No. 9, yes Your Honor. Sorry
14 about that.

15 THE COURT: Okay. And then the last one was what?

16 MS. BELL: 17.

17 THE COURT: Okay. Okay.

18 MS. BELL: And I've shown these to counsel, Your
19 Honor. Mr. Gray did object because technically they haven't
20 been admitted yet, but of course they will be very shortly.

21 THE COURT: Technically they have not been, but
22 they are good for demonstrative purposes at this time. And
23 I take it that one or more of these go to Mr. Gray's
24 objection with respect to still photos and --

25 MR. GRAY: That's correct, Your Honor.

1 THE COURT: And we will deal with --

2 MR. GRAY: And I'd ask the court to look at the
3 photos that they're trying to introduce. They're photos
4 from the --

5 THE COURT: Okay. I will look at them.

6 MR. GRAY: -- body camera.

7 MS. BELL: May I approach?

8 THE COURT: Sure.

9 MS. BELL: Thank you.

10 MR. GRAY: I think they're an unfair depiction of
11 my client at the time of the videos.

12 THE COURT: Counsel, two of these are the same
13 picture.

14 MS. BELL: Your Honor, they are actually -- there
15 are three of them that are the same, and that is because
16 counsel objected to just simply putting the one picture on
17 the same slide as the other picture so that we could
18 identify the officers both from the back and the front. And
19 so we made them separate slides so we would not have two
20 pictures on one slide.

21 THE COURT: Okay. Well --

22 MS. BELL: So that's why it's in there three
23 times.

24 THE COURT: I do consider that to be cumulative,
25 counsel. We're going to take -- you're going to take two of

1 those out of those duplicative exhibits, but outside of
2 that, for illustrative purposes they can be used in opening.

3 MS. BELL: Your Honor, then can we just put two of
4 them on the slide at the same time so that it's just more
5 efficient? So what we would do is put the one from far away
6 and then the one from up close and say this person is Tou
7 Thao and this person is Tou Thao.

8 THE COURT: Okay. Go ahead and do that, yeah.

9 MR. ROBERT PAULE: Your Honor?

10 THE COURT: Yeah.

11 MR. ROBERT PAULE: If the court is ready, I do
12 have three demonstrative exhibits I was planning on using.

13 THE COURT: Okay. I was going to get to that.
14 Very good. Go ahead.

15 MR. ROBERT PAULE: I have three, and I have not
16 shown them to counsel but I will. They are basically
17 exhibits that I intend to use as demonstrative exhibits to
18 put up on the screen during my opening to orient the jurors
19 to the area in question.

20 The first is essentially a map of Minneapolis --

21 COURT REPORTER: Could you use the microphone,
22 please. Thank you.

23 MR. ROBERT PAULE: The first one, excuse me, is a
24 map of Minneapolis that was taken from the internet that
25 just shows the various neighborhoods. My intention is to

1 use this to orient the jury to what part of Minneapolis this
2 incident occurred in.

3 The second is essentially an aerial photograph of
4 the intersection of 38th Street and Chicago Avenue South in
5 Minneapolis with three additions. One is just to indicate
6 where Cup, C-u-p, Foods is. The second is to indicate where
7 the Dragon Wok restaurant is. And the third is to indicate
8 where the Speedway station is.

9 The third demonstrative exhibit is an exact
10 replicate of Exhibit No. 2, except it is blown up to bring
11 us a little closer. And I've also got a blue square where I
12 was going to indicate that the blue Mercedes SUV was parked
13 outside of Cup Foods, as well as a black square with the
14 number 320 on it on the front side of Cup Foods on Chicago
15 Avenue to indicate where Squad 320 was parked, Your Honor.

16 I will show these to counsel.

17 THE COURT: You can do that now.

18 MR. PAULE: And then I can bring them to the
19 court.

20 THE COURT: Very well.

21 Any other things on this kind of a subject?

22 MR. ROBERT PAULE: Nothing further, Your Honor.
23 Thank you.

24 THE COURT: Okay.

25 MR. PAULE: May I approach the court, Your Honor?

1 THE COURT: Sure.

2 Objection to these demonstratives?

3 MS. BELL: No, Your Honor.

4 THE COURT: Okay. You may use them, then, as
5 demonstrative exhibits.

6 I've got to get my big three-hole punch in here.
7 Not now.

8 COURTROOM DEPUTY: Sure.

9 MR. PAULE: Your Honor, those are my only copies.

10 THE COURT: Okay. What else do we have at this
11 point this morning?

12 MS. BELL: Your Honor, I would, with the court's
13 indulgence, like to put something on the record.

14 I don't know if the court even caught it, and I
15 heard it but didn't register it at the time. When we were
16 starting our cause discussion with the headsets on when we
17 were picking the jury, Mr. Plunkett, before he started
18 explaining his cause strikes said, "And I had wanted to just
19 note an objection to the courtroom closure before we go
20 forward."

21 And so I wanted to make sure we had something on
22 the record about the efforts this court has taken to allow
23 access when we were picking a jury, that because of COVID-19
24 and the sort of extreme position we're in now with the peak
25 coming on Omicron, that in order to space the jurors

1 carefully in order to get enough jurors in here to work
2 through the venire panel, the court allowed five members of
3 the press to be here and then allowed streaming to two
4 locations separately in the courthouse.

5 And so I just wanted to make sure that we put on
6 the record the reasons that we were in that particular
7 predicament given the COVID-19 pandemic and that, in fact,
8 the court had taken steps to allow access to the courtroom
9 for that.

10 I had not had a chance to respond to that and I
11 know the court hadn't had a chance when we were dealing with
12 the cause strikes to respond to that.

13 THE COURT: Okay. I -- thank you, counsel. I
14 think I've covered this a half a dozen times and the record
15 really speaks for itself, and I think we've tried to be
16 as -- tried to be as clear as we can with respect to the
17 restrictions that just inevitably exist.

18 Okay. Anything else? Good enough. Well, I guess
19 for 15 minutes the guys can sit around and talk about how
20 exciting the football games were. I don't know what the
21 rest of you will do.

22 But, with that, we will stand in recess for a few
23 minutes and be back, unless -- have we got the entire jury
24 here?

25 COURTROOM DEPUTY: Yeah, I'll just --

1 MS. BELL: Could we take a bathroom break? That
2 one would be the one thing I would ask.

3 THE COURT: That you may do.

4 MS. BELL: Thank you.

5 THE COURT: And that's very appropriate. I kind
6 of was looking at my watch at the possibility of starting a
7 little bit early, but let's take the break. We will stand
8 in recess for at least ten minutes.

9 MS. BELL: Your Honor, I did mean to tell you also
10 that our first witness, right now we have her scheduled to
11 come basically during what we anticipate the lunch break
12 will be. Between instructing the jury and openings, it
13 didn't seem like we were going to get her on in the morning.

14 THE COURT: Oh, I'm sure not. I would be very
15 surprised if we complete openings this morning, but we will
16 see. We'll see how it goes.

17 MS. BELL: Thank you.

18 THE COURT: Okay. Oh, just a minute. One more
19 question. With respect to your first witness, will that get
20 into any of the exhibits that may have been stipulated to
21 but which I have not made any decisions or rulings?

22 MS. BELL: So, Your Honor, our intention is --
23 yes. The first -- before we actually even call the first
24 witness, we plan to offer all of the stipulated --

25 THE COURT: I know you're going to do that.

1 MS. BELL: Yes. And then she will get into both
2 the original videos, so that 1 through 20, and she'll also
3 get into those combined or synced side-by-side videos. So
4 that will be our first witness, yes.

5 THE COURT: Okay. That's fine. I raise the
6 question because, as I did indicate to you, I just really
7 have not had an opportunity to review some of the later
8 training manuals and that kind of thing and -- but I'll have
9 that done before we come back in.

10 At some point we obviously will have to deal with
11 objections that may exist as to the exhibits between roughly
12 21 and 35. Okay.

13 (Recess taken at 9:48 a.m.)

14 * * * * *

15 (10:07 a.m.)

16 **IN OPEN COURT**

17 **(JURY PRESENT)**

18 THE COURT: You may be seated.

19 Good morning, everyone, and welcome to the jury.
20 We thank you for being with us here this morning.

21 And as we start this morning, the first thing I'm
22 going to ask is that we have Ms. Magee administer the oath
23 to all of the 18 jurors that have been selected to hear this
24 case.

25 Would all of the jurors please rise and raise your

1 right hand.

2 COURTROOM DEPUTY: Do each of you solemnly swear
3 that you will well and truly try the issues in this case and
4 true verdict render according to the evidence and the law as
5 it shall be given to you by the court, so help you God?

6 THE JURY: (I do.)

7 THE COURT: Thank you. You may be seated.

8 Members of the jury, we're about to begin the
9 trial of the case about which you heard some details during
10 the process of jury selection. Before the trial begins,
11 however, there are certain instructions that you should have
12 in order to understand what will be presented before you and
13 how you should conduct yourselves during the trial.

14 First, you have had discussions and we will
15 continue to have discussions about this COVID business. I
16 want to assure you that we're doing everything we can to
17 keep you and your fellow jurors safe.

18 If any of you do become ill, and we hope you
19 won't, I ask that you get tested as soon as possible. And
20 the court has rapid test kits available for this purpose.
21 If you or someone in your immediate family with whom you
22 have had recent close contact tests positive, please contact
23 the court immediately.

24 Ms. Magee, my courtroom deputy, is your appointed
25 contact for any communications after hours and she has given

1 you a cell phone number that you may use if you need to make
2 this contact.

3 Now, court will convene each day at 9:30 or
4 10:00 a.m. and will adjourn for the day between 4:30 and
5 5:00 p.m. There will also be short recesses in the morning
6 and afternoon. On some occasions the case moves faster than
7 the attorneys anticipate and it may be necessary to adjourn
8 earlier.

9 And the parties also try to present their cases in
10 an orderly manner. However, this is not always possible and
11 sometimes it's necessary that certain witnesses be called
12 and scheduled at only certain times and certain days. As a
13 result of that, those witnesses are called what we refer to
14 as out of order. And should that happen, we'll advise you
15 of the circumstance so you understand what the purpose of
16 that particular situation might be.

17 What I say now is intended to serve as an
18 introduction to the trial of the case. At the end of the
19 trial, I will give you further instructions. I may also
20 give you instructions during the trial.

21 Now, unless I specifically tell you otherwise, all
22 instructions, both those I give you now and those that I
23 give you later, are equally binding on you and must be
24 followed.

25 This is a criminal case commenced by the United

1 States, which I may sometimes refer to as prosecution,
2 sometimes as the government, against the defendants. The
3 case is based on an indictment.

4 Defendants have been charged as follows in the
5 indictment:

6 Count 2 of the indictment charges Defendant Tou
7 Thao and J. Alexander Kueng with deprivation under color of
8 law George Floyd's right to be free from unreasonable
9 seizure, in violation of 18 U.S.C. Section 242.

10 Count 3 charges Defendant Tou Thao, J. Alexander
11 Kueng, and Thomas Kiernan Lane with deprivation under color
12 of law of George Floyd's right to be free of deliberate
13 indifference to his serious medical needs, in violation of
14 18 U.S.C. Section 242.

15 Now, you should understand that an indictment is
16 simply an accusation. It is not evidence of anything.
17 Defendants have pled not guilty to the indictment and are
18 presumed to be innocent unless and until proved guilty
19 beyond a reasonable doubt.

20 You might notice that the indictment mentions
21 rights secured and protected by the Constitution and laws of
22 the United States. The constitutional rights involved in
23 this case are the rights of every person in the United
24 States to be free from the use of unreasonable force by a
25 police officer and to be free from a police officer's

1 deliberate indifference to their serious medical needs while
2 in police custody. These rights belong to everyone and have
3 nothing to do with a person's race, religion, or ethnicity.

4 It will be your duty to decide from the evidence
5 whether each defendant is guilty or not guilty of the crimes
6 charged. From the evidence you will decide what the facts
7 are. You are entitled to consider that evidence in the
8 light of your own observations and experience in the affairs
9 of life. You may use reason and common sense to draw
10 deductions or conclusions from facts which have been
11 established by the evidence. You will then apply those
12 facts to the law, which I give you in these and in my other
13 instructions and in that way each reach your verdict.

14 You are the sole judges of the facts, but you must
15 follow my instructions, whether you agree with them or not.
16 You have taken an oath to do so. Do not allow sympathy or
17 prejudice to influence you. The law demands of you a just
18 verdict unaffected by anything except the evidence, your
19 common sense, and the law as I give it to you.

20 Now, the trial will proceed in the following
21 order:

22 First, the parties have the opportunity to make
23 opening statements. The government may make an opening
24 statement at the beginning of the case. The defendants may
25 make opening statements following the opening statements for

1 the government or may defer the making of an opening
2 statement until the close of the government's case. No
3 party is obliged to make an opening statement. What is said
4 in the opening statements is not evidence. The statements
5 simply serve the purpose of an introduction to the evidence
6 which the parties making these statements intends to
7 produce.

8 Second, the government will introduce evidence in
9 support of the charges contained in the indictment.

10 Third, after the government has presented its
11 evidence, the defendants may present evidence, but are not
12 obliged to do so. The defendants are presumed innocent.
13 The burden is always on the government to prove every
14 element of the offense charged beyond a reasonable doubt.
15 The law never imposes on a defendant in a criminal case the
16 burden of calling any witnesses or introducing any evidence.

17 Fourth, at the conclusion of the evidence, each
18 party has the opportunity to present closing argument in
19 support of their case. What is said in closing argument is
20 not evidence, just as what is said in opening statements is
21 not evidence. The arguments are designed to present to you
22 the contentions of the parties as to what the evidence has
23 shown and what inferences may be drawn from the evidence.
24 The government has the right to open and close the argument.

25 Fifth, I will instruct you on the applicable law

1 and you will then retire to consider your verdict. Your
2 verdict must be unanimous.

3 Your purpose as jurors is to find and determine
4 the facts. Under our system of criminal procedure, you are
5 the sole judges of the facts. If at any time I should make
6 any comment regarding facts, you are at liberty to disregard
7 it.

8 It's especially important that you perform your
9 duty of determining the facts diligently and
10 conscientiously, for ordinarily there is no means of
11 correcting an erroneous determination of facts by the jury.

12 You are to determine the facts in the case solely
13 from the evidence in the case, which consists of the
14 testimony of witnesses and the exhibits received in
15 evidence.

16 Questions asked by the lawyers are not evidence.
17 The evidence consists of the witnesses' answers to the
18 questions.

19 As I said earlier, statements, and arguments of
20 counsel are not evidence. Counsel, however, may agree to
21 facts that are not in dispute; and when they do so, you are
22 to accept the facts as stipulated by counsel.

23 On occasion I may tell you that I'm taking
24 judicial notice of certain facts. You may then accept those
25 facts as true, but are not required to do so. It's up to

1 you to decide what inferences are to be drawn from the
2 evidence and what facts are established by the evidence.

3 The parties may sometimes present objections to
4 some of the testimony or other evidence. It is the duty of
5 a party to object to evidence that he or she believes may
6 not properly be offered, and you should not be prejudiced in
7 any way against a party who makes objections.

8 At times I may sustain objections or direct you to
9 disregard certain testimony or exhibits. You must not
10 consider any evidence to which an objection has been
11 sustained or which I have instructed you to disregard.

12 Now, I understand that you may want to tell your
13 family and close friends and other people about your
14 participation in this trial so that you can explain when you
15 are required to be in court. And you should warn them not
16 to ask you about the case, tell you anything they know or
17 think that they know about it or discuss this case in your
18 presence.

19 You must not post any information on a social
20 network or communicate with anyone about the parties,
21 witnesses, participants, charges, evidence, or anything else
22 relating to this case or tell anyone anything about the
23 jury's deliberations in this case until after I accept your
24 verdict or until I give you specific permission to do so.

25 If you discuss the case with someone other than

1 the other jurors during deliberations, you may be influenced
2 in your verdict by their opinion. That would not be fair to
3 the parties. It would result in a verdict that is not based
4 on the evidence and the law.

5 While you are in the courthouse and until you are
6 discharged in this case, do not provide any information to
7 anyone by any means about the case. Thus, for example, do
8 not talk face-to-face or use any electronic device or media,
9 such as the telephone, a cell or smartphone, camera,
10 recording device, computer, the internet or any internet
11 service, any text or instant messaging service or any social
12 media, including services or apps, such as Facebook,
13 Instagram, Snapchat, or Twitter, or any other way to
14 communicate to anyone any information about this case until
15 I accept your verdict or until you have been excused as a
16 juror.

17 Do not research on the internet, in libraries or
18 in newspapers or in any other way, or make any investigation
19 about this case on your own. Do not visit or view any place
20 discussed in this case, and do not use internet programs or
21 other devices to search for or to view any place discussed
22 by the testimony.

23 Also, do not research any information about this
24 case, the law, or the people involved, including the
25 parties, the witnesses, the lawyers, or the judge, until you

1 have been excused as a juror.

2 The parties have the right to have this case
3 decided only on evidence that they know about and that has
4 been presented here in court. If you do some research or
5 investigation or experiment that we don't know about, then
6 your verdict may be influenced by inaccurate, incomplete, or
7 misleading information that has not been tested by the trial
8 process, including the oath to tell the truth and by
9 cross-examination. Each of the parties is entitled to a
10 fair trial rendered by an impartial jury, and you must
11 conduct yourself so as to maintain the integrity of the
12 trial process.

13 If you decide a case based on information not
14 presented in court, you will have denied the parties a fair
15 trial in accordance with the rules of this country and you
16 will have done an injustice. It is very important that you
17 abide by these rules. Failure to follow these instructions
18 could result in the case having to be retried.

19 During the trial you must not discuss the case in
20 any manner, even amongst yourselves, and you must not permit
21 anyone to attempt to discuss it with you or in your
22 presence.

23 Insofar as the lawyers are concerned, as well as
24 others whom you may come to recognize as having some
25 connection in the case, you are instructed that, in order to

1 avoid even the appearance of impropriety, you should have no
2 conversation whatever with those persons while you are
3 serving on the jury.

4 Now, in considering the weight and the value of
5 the testimony of any witness, you may take into
6 consideration the appearance, attitude, the behavior of the
7 witness; the interest of the witness in the outcome of the
8 case, if any; the relation of the witness to any party to
9 the suit; the inclination of the witness to speak truthfully
10 or not; the probability or improbability of the witness's
11 statements; and all other facts and circumstances in
12 evidence. Thus, you may give the testimony of any witness
13 just such weight and value as you believe the testimony of
14 the witness is entitled to receive.

15 No statement, ruling, remark, or comment that I
16 may make during the course of the trial is intended to
17 indicate my opinion as to how you should decide the case or
18 to influence you in any way in your determination of the
19 facts.

20 At times I may ask questions of witnesses. If I
21 do so, it's for the purpose of bringing out matters that I
22 believe should be brought out. It is not in any way
23 intended to indicate my opinion about the facts or to
24 indicate the weight I believe you should give to the
25 testimony of the witness.

1 I may also find it necessary to admonish the
2 lawyers. And if I do, you should not show prejudice towards
3 a lawyer or his or her client because I have found it
4 necessary to admonish him or her.

5 Under the federal system of criminal procedure,
6 you are not to concern yourself in any way with the sentence
7 that the defendant might receive if you should find him
8 guilty. Your function is solely to decide whether the
9 defendants are guilty or not guilty of the charges against
10 them. If and only if you find the defendants guilty of the
11 charge does it become the duty of the court to pronounce
12 sentence.

13 As I have stated, until this case is submitted to
14 you, you must not discuss it with anyone, even your fellow
15 jurors. After it is submitted to you, you must discuss it
16 only in the jury room with your fellow jurors.

17 It's improper -- I'm sorry. It's important that
18 you keep an open mind and not decide any issue in the case
19 until the entire case has been submitted to you under the
20 instructions of the court.

21 Now, we will begin by affording the parties for
22 each side the opportunity to make opening statements. I ask
23 that you give them your close attention as I recognize them
24 for the purpose of making an opening statement.

25 Would the government like to proceed with an

1 opening statement, please?

2 MS. TREPEL: Yes, Your Honor.

3 THE COURT: Good morning.

4 MS. TREPEL: Good morning, Your Honor, members of
5 the jury.

6 Ms. Magee, do we have the --

7 (Pause)

8 MS. TREPEL: Good morning. And may it please the
9 court.

10 THE COURT: Counsel, I wonder if we could get you
11 to bring the microphone a little more directly to your
12 voice. You are a little soft-spoken. It might be a little
13 difficult to hear.

14 MS. TREPEL: Is this better, Your Honor?

15 THE COURT: I think so.

16 MS. TREPEL: Okay. I will try, and please do
17 signal to me if my voice drops, because it does tend to.
18 Thank you.

19 "In your custody is in your care," that is a
20 fundamental principle of policing taught to every
21 Minneapolis police officer, including the three defendants
22 in this case. It means that when police officers take a
23 person into their custody, those officers are responsible
24 for keeping that person safe, for protecting them. That's
25 because when officers handcuff a person, they take away that

1 person's ability to protect themselves.

2 "In your custody is in your care," it's not just a
3 moral responsibility. It's what the law requires under the
4 United States Constitution. The law requires police
5 officers to intervene, to stop another officer they see
6 using excessive force. And the law requires police officers
7 to provide basic medical aid when they know someone in their
8 custody needs it. Failing to do so is a crime.

9 When George Floyd was in the custody of the three
10 defendants in this case, Tou Thao, J. Alexander Kueng, and
11 Thomas Lane, they watched as Mr. Floyd suffered a slow and
12 agonizing death.

13 You will hear and you will see with your own eyes
14 that Derek Chauvin, a fourth officer of the same rank as the
15 defendants, knelt on Mr. Floyd's neck and for nine minutes
16 and 29 seconds killed him.

17 This officer, Chauvin, slowly crushed the breath
18 out of Mr. Floyd as, first, one and then two and then
19 eventually a group of passersby cried out for the other
20 officers, the defendants, to stop the slow-motion killing
21 they were all witnessing.

22 As the people standing on the sidewalk pleaded,
23 the people who could not only have stopped it, but who were
24 trained that they had an obligation to do so, stood by and
25 chose to let it continue.

1 For nine minutes and 29 seconds the three
2 defendants didn't lift a finger as George Floyd repeatedly
3 told them, "I can't breathe."

4 For nine minutes and 29 seconds the three
5 defendants ignored their own training that required them to
6 step in when they saw a person in their custody who needed
7 help.

8 For nine minutes and 29 seconds the defendants
9 ignored the cries of the bystanders and held their positions
10 as the window in which Mr. Floyd's life could have been
11 saved slammed shut.

12 Throughout the course of this trial, you will hear
13 from police officer after officer who will tell you that "in
14 your custody is in your care" means that when an officer
15 sees a threat to the safety of a person in their custody,
16 the officer must, not should, must step in and stop the
17 threat. It means that if a person in custody requires
18 medical attention, the officers are required to provide it
19 to the best of their ability and training. It means that if
20 someone is abusing a person in custody, the officers must
21 step in and try to stop it.

22 That is what the law requires of officers. That
23 legal duty doesn't change if the person inflicting the harm
24 happens to be a fellow officer, even a more senior officer.
25 That may make it harder in the moment, but signing up to

1 carry a gun and wear a badge comes with life-and-death
2 responsibilities. The duty to protect -- "in your custody
3 is in your care" -- is one of them.

4 And you will hear from police officer witnesses
5 that when police officers intervene to protect a person in
6 custody from a fellow officer's abuse, they're protecting
7 their fellow officer too by stopping them from committing a
8 crime.

9 But, here, on May 25th, Memorial Day, 2020, for
10 second after second, minute after minute, these three
11 CPR-trained defendants stood or knelt next to Officer
12 Chauvin as he slowly killed George Floyd right in front of
13 them.

14 For more than nine minutes, each of the three
15 defendants made a conscious choice over and over again not
16 to act. They chose not to intervene and stop Chauvin as he
17 killed a man slowly in front of their eyes on a public
18 street in broad daylight. They chose not to protect George
19 Floyd, the man they had handcuffed and placed in their
20 custody.

21 You will hear that what led up to Mr. Floyd's
22 death was that a cashier at Cup Foods, a convenience store,
23 suspected that Mr. Floyd had paid with a counterfeit \$20
24 bill and someone called the police.

25 Two officers, Defendants Kueng and Lane, arrived,

1 pulled Mr. Floyd from his car, and handcuffed him.

2 Mr. Floyd sat on a curb when they told him to, responded to
3 their questions, walked with them to their police car, where
4 they searched him.

5 When Defendants Kueng and Lane told Mr. Floyd he
6 needed to get into the police car, though, Mr. Floyd said
7 that he was claustrophobic and afraid to get in. Defendants
8 Kueng and Lane tried pushing him in and he struggled with
9 them. Defendant Thao and Officer Chauvin arrived and
10 Defendants Lane and Thao and even Mr. Floyd himself
11 suggested that they place him on the ground instead.

12 You will see that before the defendants took
13 Mr. Floyd to the ground, Mr. Floyd was already handcuffed
14 behind his back. He had already been searched. There were
15 no weapons on him.

16 When the defendants first took Mr. Floyd to the
17 ground and Officer Chauvin knelt on his neck, he struggled
18 against the officers for about 20 seconds and then he
19 stopped. From that point on, he didn't resist. He pleaded
20 with the defendants to let him breathe. He repeatedly
21 begged, "Please, somebody help me." He said, "I can't
22 breathe," not just once or twice, but 25 times as he tried
23 to alert the officers that he was dying. After four minutes
24 on the ground, Mr. Floyd said his very last words, "Please,
25 man, I can't breathe."

1 After six minutes on the ground, at 8:25 p.m.
2 Mr. Floyd had become unresponsive. And after Mr. Floyd lost
3 the ability to speak, the people on the sidewalk spoke up
4 for him. These people on the sidewalk had been passing by,
5 and they stopped in horror when they saw one officer forcing
6 the breath out of a handcuffed man lying facedown on the
7 pavement with two other officers holding him down and a
8 fourth standing guard.

9 You will hear from several of those passersby: An
10 older gentleman who pulled his car over, a high school
11 student who was walking her nine-year-old cousin to the
12 store to get a snack, and an off-duty firefighter out for a
13 walk.

14 These people stopped what they were doing and
15 cried out and then pleaded and then demanded that the
16 defendants get off -- get Officer Chauvin off of the man
17 they now know as George Floyd. They understood, just by
18 seeing his body go limp, listening to his words, and then
19 listening to his silence, that unless somebody changed what
20 was happening, he would die.

21 "He is human," one of them reminded the officers.
22 Yet you will see that the defendants chose not to act. They
23 chose to ignore what they saw and heard. They chose to
24 dismiss the words of the passersby and of Mr. Floyd himself.
25 And they made that decision despite the repeated cries and

1 pleas from the shocked people standing on the sidewalk,
2 people who required no special training to understand the
3 horror of what they were seeing.

4 Now, I'm going to first focus on Defendant Thao.
5 For the entire time Chauvin pressed his knee into
6 Mr. Floyd's neck, the entire nine minutes and 29 seconds,
7 Defendant Thao stood just a few feet away doing nothing and
8 saying nothing to intervene to get Officer Chauvin off of
9 Mr. Floyd.

10 You will see both video from Defendant Thao's
11 body-worn camera and a video of him recorded by bystanders
12 and surveillance cameras that will allow you to see both the
13 direction in which Defendant Thao was looking and what he
14 could see from that perspective.

15 As an aside, you are going to see many videos
16 during the course of this trial and they will show you many
17 perspectives, videos from the police body-worn cameras,
18 videos taken by bystanders standing on the sidewalk,
19 surveillance video from the city and local businesses. They
20 will be offered as evidence in this case in their entirety,
21 so you will see more than the small portions of video you
22 may have previously seen.

23 Turning back to Defendant Thao, these videos will
24 show that during the first six minutes that Chauvin pressed
25 Mr. Floyd face down into the street, for the entire time

1 that Mr. Floyd pleaded that he couldn't breathe and even
2 after he lost consciousness, Defendant Thao stood directly
3 next to Officer Chauvin.

4 You will see that Defendant Thao, the most senior
5 of the three defendants with eight years on the job, ask
6 Mr. Floyd, "What are you on?"

7 You will hear from MPD officers that when people
8 using drugs are in police custody, officers are trained to
9 be especially alert for medical issues.

10 Defendant Thao correctly suspected that Mr. Floyd
11 had been using drugs, but instead of exercising additional
12 care, he turned it into a taunt, telling the people on the
13 sidewalk, "This is why you don't do drugs, kids," as they
14 pleaded with him to do his job and stop Officer Chauvin from
15 killing Mr. Floyd.

16 When Mr. Floyd could still speak, he told
17 Defendant Thao exactly what and who he needed protection
18 from. He said, "I can't breathe. Please. A knee on my
19 neck. I can't breathe." You will see Defendant Thao was
20 looking at Chauvin pressing his knee into Mr. Floyd's neck
21 as Mr. Floyd said those words.

22 You will see that by this point Chauvin had been
23 holding Mr. Floyd down by his neck for almost three minutes.
24 Defendant Thao was in easy reach of Officer Chauvin, so if
25 he had wanted to tap his partner on the shoulder, he could

1 have. But Defendant Thao did nothing to tell Chauvin it's
2 enough, we've got it, this man isn't resisting, he's dying.
3 Instead, Defendant Thao continued standing right next to
4 Chauvin and Floyd for another three minutes until after
5 Mr. Floyd's eyes closed and he lost consciousness.

6 At that point the bystanders took over sounding
7 the alarm on Mr. Floyd's behalf. As they gathered on the
8 sidewalk near the squad car and saw Mr. Floyd lost
9 consciousness, their cries became more urgent.

10 I'm going to pause here and talk about these
11 bystanders. You may hear the people who watched a police
12 officer kill a man in his custody described as an angry or
13 hostile crowd.

14 As you watch the videos, pay attention to when
15 Defendant Thao steps toward the bystanders on the sidewalk
16 for the very first time at 8:25 p.m., during the sixth
17 minute that the officers had Mr. Floyd pinned on the ground
18 and after he had already lost consciousness.

19 You will see six people standing on the sidewalk,
20 including two teens and a nine-year-old, and you will hear
21 that's when their cries turned to urgent demands to look at
22 him and check his pulse. You will know that Defendant Thao
23 heard them because he answered them. When a bystander told
24 him, "He's about to pass out," Defendant Thao responded,
25 "That's what happens laying on the ground."

1 The bystanders told Defendant Thao what they could
2 plainly see, that Mr. Floyd had stopped speaking and was now
3 not moving and unresponsive. They told Defendant Thao to do
4 exactly as he had been trained in that situation, to get
5 Chauvin off and check Mr. Floyd's breathing and pulse, all
6 part of a duty to a person in his custody, even when, as
7 here, an ambulance was on the way.

8 A firefighter from Minneapolis walked up and
9 identified herself. Like all firefighters in the city, she
10 was a trained EMT, alarmed that the man she saw pinned under
11 multiple officers appeared to be unconscious. She asked if
12 Mr. Floyd had a pulse. Each of the three defendants
13 individually told her to get back on the sidewalk.

14 The firefighter asked, then demanded that
15 Defendant Thao check Mr. Floyd's pulse or that he get the
16 other officers to do it. You will know that Defendant Thao
17 heard her because he responded to her. "How long are we
18 going to have this conversation?" And you will see on the
19 firefighter's face and in her tone of voice how urgent it
20 was, how much she cared.

21 Look at Defendant Thao's face, listen to his
22 voice, notice where he was standing when Mr. Floyd lost
23 consciousness, and you will see that, despite standing in a
24 position to see and hear how Mr. Floyd had stopped talking
25 and lost consciousness and to hear the bystanders beg him to

1 check a pulse, he chose to do nothing.

2 Now, on the other side of the police car and out
3 of sight of the people on the sidewalk, Defendant Kueng was
4 also kneeling on Mr. Floyd. Kueng was even closer to
5 Officer Chauvin than Defendant Thao, as Mr. Kueng was
6 kneeling on Mr. Floyd just below his waist and just inches
7 from Officer Chauvin.

8 After three minutes during which Mr. Floyd was
9 trying and failing to take in enough air, Mr. Floyd said, "A
10 knee on my neck. I'm through." Look at Defendant Kueng as
11 Mr. Floyd said those words. As Mr. Floyd said, "I'm
12 through," Defendant Kueng focused his attention on a piece
13 of gravel stuck in the police car tire rather than the man
14 underneath his knee.

15 As the bystanders cried out for Chauvin to get off
16 him, Defendant Kueng continued kneeling on an unresisting
17 Mr. Floyd and casually picked the piece of gravel out of the
18 police car tire.

19 Then before Mr. Floyd lost consciousness, when
20 there was still time to get him the oxygen he so desperately
21 needed, listen for what Defendant Kueng said. At 8:23 p.m.,
22 after the officers had already held Mr. Floyd to the ground
23 for four minutes and after Mr. Floyd had been compliant for
24 more than three minutes, Defendant Kueng said, "Just leave
25 him," as at the very same time Chauvin said Mr. Floyd was

1 staying put the way they've got him.

2 And that's what Officer Chauvin and Defendant
3 Kueng did; they just left Mr. Floyd under the weight of
4 their knees rather than moving him onto his side, the way
5 they were trained, into a position that would allow him to
6 breathe.

7 They continued applying force rather than
8 reassessing the situation the way they were trained. They
9 used force rather than stopping the force, which here
10 included Chauvin's knee compressing a man's neck, when a
11 person has stopped resisting. The seconds, then minutes
12 ticked by.

13 Defendant Kueng remained kneeling on Mr. Floyd in
14 that position for a full eight minutes, eight minutes.
15 Kueng, who could feel Mr. Floyd's body beneath his knee,
16 never once told Officer Chauvin to stop or we've got it or
17 get off him. You will see that Defendant Kueng never once
18 said those things, never once said or did anything to aid
19 Mr. Floyd, even after you will see that Defendant Kueng
20 checked Mr. Floyd's pulse twice and twice said he could not
21 find one.

22 And pay attention to what you won't see happen
23 after that, after Defendant Kueng reports that he can't find
24 a pulse. You won't see him do anything to help Mr. Floyd.
25 You won't see what a police medical trainer will tell you

1 she trains officers to do when someone in their custody
2 loses a pulse.

3 After Defendant Kueng said he couldn't find a
4 pulse, you won't see him try to roll Mr. Floyd over and
5 begin CPR. You won't hear him say, "He has no pulse, we've
6 got to move," even though the defendants were trained that
7 seconds count when a person loses a pulse and that starting
8 CPR immediately greatly increases a person's chance of
9 survival.

10 Instead, Defendant Kueng remained crouched next to
11 Chauvin, who still had his knee on Mr. Floyd's neck, and
12 Defendant Kueng still said nothing, still never told Officer
13 Chauvin to stop, even as Chauvin continued to hold his knees
14 on Mr. Floyd for another two minutes and 44 seconds after
15 Defendant Kueng said he couldn't find a pulse, even as the
16 paramedics arrived and got ready to move Mr. Floyd onto a
17 stretcher.

18 Now, Defendant Lane knelt at Mr. Floyd's feet to
19 the right of Defendant Kueng and remained there for the
20 entire nine minutes and 29 seconds that Officer Chauvin
21 knelt on Mr. Floyd's neck.

22 For the first four minutes, as Mr. Floyd
23 repeatedly warned the officers that he couldn't breathe, you
24 will see and hear that Defendant Lane did nothing.

25 After about four minutes, Defendant Lane asked,

1 "Should we roll him on his side?" Defendant Lane knew to
2 ask that question because he, like every MPD officer, was
3 trained over and over again on the answer to that question.
4 Yes, you've got to.

5 When someone is facedown handcuffed and compliant,
6 you roll them on their side as a matter of course, both
7 because of the dangers to a person's breathing and because
8 you will hear there's simply no reason to kneel on someone's
9 neck after a person is handcuffed and compliant.

10 But Defendant Kueng, who had so recently been
11 drilled in these basic principles, shot down Lane's
12 question. Defendant Kueng said, "No, just leave him," and
13 Officer Chauvin agreed.

14 And Defendant Lane went back to doing and saying
15 nothing for another minute as Officer Chauvin kneeled on
16 Mr. Floyd's neck. At that point one of the bystanders on
17 the sidewalk yelled, "He's passing out." And Defendant Lane
18 acknowledged, "I think he's passing out." But Defendant
19 Lane didn't do anything. He also didn't say anything else,
20 like we've got to get off of him now or let's move.

21 Another minute passed and Lane again asked about
22 rolling Mr. Floyd on his side. This time no one answered
23 him, no one shot him down, no one told him no. But instead
24 of taking this opportunity to follow up and stop the abuse
25 of the man who was in his custody and care, he went back to

1 doing nothing. He didn't repeat himself or try to point out
2 the danger, hey, this guy is passed out and you are both
3 still on top of him. This was already after more than six
4 minutes had passed and after Mr. Floyd had stopped speaking,
5 stopped moving, and lost consciousness.

6 By then the voices of the folks watching from the
7 sidewalk were growing desperate. They could see that
8 Mr. Floyd was unresponsive and they understood that when a
9 human being goes from talking to unresponsive, action is
10 required. So they yelled for the officers to take his
11 pulse.

12 Defendant Lane asked Kueng if Mr. Floyd had a
13 pulse. You will see Defendant Kueng check for a pulse and
14 then say, "I can't find one." And then Defendant Lane took
15 no action. Lane said and did nothing more at all for the
16 next two minutes and 44 seconds after learning that the
17 person in his custody and care had no pulse. When duty
18 required immediate action, Lane said nothing, he chose to do
19 nothing.

20 Now, I expect you will hear Defendants Kueng and
21 Lane referred to as rookies and you will hear that Officer
22 Chauvin had been --

23 MR. GRAY: Judge, I object to this as argument.
24 It's been argument all through the opening statement.

25 THE COURT: I sustain that. That is argument,

1 counsel.

2 MS. TREPEL: Okay.

3 As a newer officer, it can be awkward or even
4 uncomfortable to call out a more experienced colleague. But
5 each of these defendants, you will hear, wore the same badge
6 and swore the same oath. And you will hear that being a
7 police officer comes with life-and-death responsibilities.

8 As you listen to the evidence, pay attention to
9 what witnesses say about the training these two defendants
10 received before taking on those responsibilities.

11 You will hear that before becoming MPD officers in
12 December 2019, they had both completed a month's long
13 policing skills course required by the State of Minnesota.
14 They then passed a state-mandated exam required to become
15 licensed police officers. They had received their CPR
16 certifications.

17 And then, already fully qualified to begin work as
18 police officers, Defendants Kueng and Lane attended and
19 graduated from the five-month MPD Police Academy. After
20 that, although they were fully qualified police officers in
21 their own right already, they completed MPD's five-month
22 field training program, where they partnered with several
23 experienced officers for additional on-the-job training.

24 During their almost year and a half of training,
25 the defendants learned that a police officer has a duty to

1 protect a person in his custody and care; that police
2 officers must intervene if they see another officer abusing
3 a person in custody; that after a struggle has ended, the
4 time to use force is over and officers must switch to an "in
5 your custody is in your care" mentality.

6 If the person in custody then needs medical aid,
7 you will hear that no matter what happened earlier, in fact,
8 especially if an officer used force, it's now the officers
9 duty to provide that aid.

10 The defendants learned basic medical skills, like
11 how to take a pulse, assess breathing, and provide CPR. And
12 you will hear that the defendants learned that leaving a
13 person handcuffed and facedown in what you will hear is
14 called the prone position is dangerous because it can
15 prevent a person from being able to breathe.

16 So they had drilled and drilled both during their
17 skills course and in the police academy, and one of the most
18 basic forms of medical care they could provide is placing
19 someone on their side in what you will hear is called the
20 side recovery position.

21 You will hear that the medical aid that would have
22 saved George Floyd's life was as simple as that, turning him
23 onto his side when his heart was still beating. Defendants
24 Kueng and Lane learned this during their training to become
25 officers. They also practiced turning people onto their

1 side or getting them up as their last step in their many
2 prone handcuffing drills.

3 Prone handcuffing is when officers handcuff people
4 facedown and then for safety and, because you will hear
5 there is no purpose in continuing to hold a compliant and
6 handcuffed person down, get them up or turn them onto their
7 side. Officers practice this over and over.

8 Defendant Thao received all of this training too
9 and then got yearly refresher costs. So no matter when an
10 officer joined the force, this training would be fresh in
11 their mind.

12 Defendant Lane had all of this same training.
13 Plus, you will hear he had additional experience because he
14 worked as a juvenile detention officer for Hennepin County.
15 There he got even more training, including more training on
16 the dangers of leaving a person restrained in the facedown
17 position.

18 And you will see that the bystanders quickly saw,
19 without any of this specialized training, that Mr. Floyd
20 needed help and they pleaded with the defendants to step in
21 and help him.

22 MR. GRAY: Your Honor, I object to this as
23 repetitive and also argumentative.

24 THE COURT: Counsel, you are arguing. After all,
25 this is not evidence, that is, what the government intends

1 to prove.

2 Continue.

3 MS. TREPEL: Thank you, Your Honor. I will be
4 sure to phrase it as the evidence will show.

5 You will see and the evidence will show that
6 despite the bystanders' cries, despite the defendants'
7 training, and despite George Floyd losing a pulse, the
8 defendants chose not to act.

9 MR. GRAY: Judge, the same objection. She's just
10 going right back into the argument.

11 THE COURT: This part I'll overrule.

12 Proceed.

13 MS. TREPEL: You will see that after nine minutes
14 and 29 seconds, Mr. Floyd was beyond the power of the
15 paramedics and doctors to revive.

16 You will see that when the ambulance arrived, it
17 was the paramedics and not these defendants, who had been
18 there the whole time, who finally indicated to Officer
19 Chauvin that he needed to get up.

20 And you will see that it was the paramedics who
21 told Defendant Lane to start CPR in the ambulance. You will
22 see that Defendant Lane knew how to do CPR because finally,
23 inside the ambulance, he began doing it when told to, almost
24 five minutes after Defendant Kueng said he couldn't find a
25 pulse.

1 And although the paramedics and later the doctors
2 and nurses attempted to resuscitate Mr. Floyd, you will
3 learn that he was at that point past saving. They declared
4 him dead at the hospital about an hour later.

5 You will hear that the Hennepin County medical
6 examiner ruled that Mr. Floyd's death was a homicide. He
7 will explain to you that Mr. Floyd's heart and lungs
8 stopped, and that the immediate cause of death was law
9 enforcement subdual restraint and neck compression.

10 You will also hear from a doctor who specializes
11 in lungs and breathing. He will explain that, based on the
12 position that Mr. Floyd was in, facedown and handcuffed
13 behind his back with Officer Chauvin's knee on his neck and
14 Defendant Kueng applying additional weight, pressing him
15 into the unyielding concrete, Mr. Floyd was for far too long
16 unable to expand his chest to take in enough oxygen.

17 The doctors will explain that, although Mr. Floyd
18 had drugs in his system and, like many people, suffered from
19 high blood pressure and narrowed arteries, it was the police
20 restraint and lack of oxygen that caused his death.

21 Before I wrap up, I want to talk very briefly
22 about the charges in this case. At the end of this case,
23 the judge will instruct you on the law, but having the
24 charges in mind as you listen to the evidence can be
25 helpful.

1 The charges here are that the defendants violated
2 Mr. Floyd's constitutional rights. The law requires police
3 officers to intervene when they see another officer using
4 excessive force and they have the ability to act.

5 The first count charges Defendant Thao and
6 Defendant Kueng with failing in their duty to intervene to
7 stop or attempt to stop Chauvin's excessive force.
8 Defendant Lane is not charged with this crime.

9 The law also requires police officers to provide
10 basic medical aid when they know a person needs it. The
11 second count charges all three defendants with seeing
12 Mr. Floyd in serious medical distress and ignoring their
13 duty to help him.

14 Both charges allege that these crimes resulted in
15 George Floyd's death. You will hear that the defendants are
16 not charged with intentionally killing Mr. Floyd, and the
17 government does not have to prove that the defendants
18 intended for him to die.

19 Our society gives police officers powers.

20 MR. GRAY: Judge, I object to this as
21 argumentative.

22 THE COURT: I think you are moving into argument,
23 counsel. This is an opening statement, not a closing.

24 MS. TREPEL: Yes, Your Honor.

25 You will hear that police officers have an

1 important responsibility to take care of the person who is
2 in their custody. "In your custody is in your care."

3 At the end of this trial, once you've heard all of
4 the evidence and met all of the witnesses, we'll ask you to
5 hold these men accountable for choosing to do nothing and
6 watch a man die. We'll ask you to find the defendants
7 guilty as charged.

8 THE COURT: Thank you.

9 Members of the jury, let's take a brief morning
10 break at this time. I would caution you, once again, not to
11 discuss the case amongst yourselves or other persons. And
12 we will be in recess for, oh, maybe between 10 and
13 15 minutes.

14 The jury may be excused.

15 (Jury excused.)

16 **IN OPEN COURT**

17 **(JURY NOT PRESENT)**

18 THE COURT: I hadn't asked earlier. I assume we
19 will go with Mr. Plunkett, Mr. Paule, and Mr. Gray, in that
20 order; is that right?

21 MR. GRAY: I was last on the indictment, Your
22 Honor.

23 MR. PLUNKETT: The indictment, Your Honor, goes
24 Mr. Paule, Mr. Plunkett, and Mr. Gray.

25 THE COURT: Okay. Okay. So we start with

1 Mr. Paule?

2 MR. ROBERT PAULE: That's fine, Your Honor.

3 THE COURT: Okay. Okay. Very well. Will do.

4 MR. PLUNKETT: Your Honor? I'm sorry. I
5 apologize. Right when the court is getting up. At some
6 point I wanted to make a motion for a mistrial based on the
7 opening. We can do that now or at any time. I'm just
8 marking the record at this time.

9 THE COURT: Go ahead.

10 MR. PLUNKETT: Thank you, Your Honor.

11 Through the course of the opening we heard
12 Mr. Gray make several objections. I think three out of four
13 were sustained. And I simply -- the objection focuses more
14 on prosecutorial misconduct and the comments that were made.

15 We all know very well that openings are not
16 arguments, and I have a lot of respect for Ms. Trepel, but a
17 lot of her argument -- a lot of her opening was arguments,
18 and Mr. Gray pointed that out.

19 At this point I'm going to be completely candid
20 with the court. It's probably premature to grant a
21 mistrial, but if we're going to have a record made about a
22 series of acts by the prosecution that could eventually lead
23 to a mistrial, I do need to make the record when they occur,
24 and that's what I'm doing at this time.

25 Thank you, Your Honor.

1 THE COURT: Okay. Thank you very much.

2 Incidentally, I don't know if I put this on the
3 record, I know I've mentioned it to you, and that is that
4 any time any of you, defense counsel, make an objection or a
5 motion, I assume all defense join in that defense or
6 motion -- in that motion or objection, unless you expressly
7 turn it down.

8 And, with that, that motion that you have just
9 made will be denied. I will confess it was moving farther
10 into the argument side than the court normally expects to
11 hear, but it is not grounds for mistrial.

12 (Recess taken at 11:04 a.m.)

13 * * * * *

14 (11:17 a.m.)

15 **IN OPEN COURT**

16 **(JURY PRESENT)**

17 THE COURT: You may be seated.

18 Mr. Paule, I recognize you for your opening.

19 MR. ROBERT PAULE: Thank you, Your Honor.

20 May it please the court --

21 THE COURT: Proceed.

22 MR. ROBERT PAULE: -- counsel for the government,
23 Mr. Plunkett, Mr. Kueng, Mr. Lane, Mr. Gray, and you,
24 members of the jury.

25 Good morning to everyone. My name is Robert

1 Paule. I, along with Ms. Natalie Paule, represent Mr. Tou
2 Thao. That is how you pronounce his name. We have the
3 honor of representing him in this matter.

4 Mr. Thao, I'd like you to stand, remove your mask,
5 with the court's permission, so the jury can see who you
6 are.

7 COURTROOM DEPUTY: Let me make sure your mic is
8 on.

9 MR. ROBERT PAULE: Thank you, Lynn.
10 You may be seated.

11 I'd like to begin at least my opening statement by
12 acknowledging a tragedy, because that's really why we are
13 hear. The death of Mr. Floyd is indeed a tragedy, just as
14 the death of any human being is a tragedy as well. However,
15 a tragedy is not a crime.

16 Now, what brings us all here to this courtroom in
17 the middle of a pandemic, with plexiglass everywhere, are
18 the events of May 25, 2020.

19 You will find out from the evidence in this case,
20 not from an argument of a lawyer, that there is a store
21 called Cup Foods. Cup Foods is located on the corner of
22 38th and Chicago.

23 I'm going to step away from the podium to use a
24 little bit of technology to orient you to the area in
25 question. There we go.

1 First of all, for those of you not familiar with
2 it, this is essentially a map of Minneapolis showing the
3 various neighborhoods involved.

4 To orient you to this, this area where it says,
5 "Central" and where I'm circling is essentially downtown
6 Minneapolis. The area of 38th and Chicago where this case
7 occurred is located in the central neighborhood on the south
8 side of Minneapolis. That is located here (indicating).
9 Excuse me. Right there where it says, "Central."

10 Now, moving along to the intersection in question,
11 this is an overhead photograph with some modifications of
12 38th and Chicago. 38th Street runs west to east. And
13 Chicago Avenue South, because Chicago Avenue does not go
14 north of downtown, runs from north to south.

15 You will see at this intersection there are three
16 specific places indicated. One is Cup Foods, not to be
17 confused with Cub Foods, but Cup Foods. That is where the
18 counterfeiting took place.

19 Across the street on the south side of 38th Street
20 directly across from Cup Foods is the Dragon Wok restaurant.
21 That you will come to know because you will see surveillance
22 video that was taken from a camera placed there by the
23 owners of the Dragon Wok.

24 And then kitty-corner from the Dragon Wok on the
25 west side of Chicago Avenue directly across from Cup Foods

1 is a Speedway station.

2 So you will hear information about that and about
3 people there.

4 I think that all of us are familiar with this
5 incident. It's been on the news so much. I think all of us
6 are also aware of a video that was taken by a young woman
7 named Darnella Frazier. She is the one who placed this
8 video, if I understand it correctly, on her Facebook
9 account, where it shortly went viral and drew the nation's
10 attention to this incident.

11 I would point out, however, that that Facebook
12 video does not show what happened before that. And for you
13 to understand what happened, the entirety of the incident,
14 and for you to understand why the officers chose to act the
15 way they did, you have to look at what occurred before the
16 Facebook video because, again, the Facebook video does not
17 show the entirety of the actions.

18 Now, what the evidence will show is this incident
19 began about 8:00 p.m. on a Monday evening. It was May 25th,
20 2020, when an employee of Cup Foods, again, Cup Foods, which
21 is located at 38th and Chicago, placed a 911 call. The
22 employee placed that 911 call to report that a customer,
23 later identified as George Floyd, had passed a counterfeit
24 \$20 bill. The employee, when making this phone call to 911,
25 also indicated that he believed that this person was under

1 the influence of either drugs or alcohol.

2 I would note at the outset that, despite what you
3 might hear otherwise, passing a counterfeit \$20 bill is a
4 crime under both state and federal law.

5 The 911 call resulted in police being dispatched
6 to Cup Foods. What you will find out is that a squad car
7 that had both then-Officer Lane and then-Officer Kueng,
8 Squad 320 -- and you will probably hear a little bit of
9 evidence about why that squad car had that particular number
10 to it -- was dispatched to go and investigate the situation.

11 The officers arrived shortly thereafter and spoke
12 with the store employees. The store employees verified that
13 they believed that Mr. Floyd had indeed passed a counterfeit
14 bill, and they led the police officers out of the store and
15 pointed out across the street that there was a blue Mercedes
16 SUV.

17 Now, I'm going to step over again to hopefully use
18 that correctly. This is the third exhibit I'm using, and
19 this is not something that's evidence in the case. This is
20 used strictly for demonstrative purposes.

21 But when Squad 320 arrived, Squad 320 arrived
22 driving southbound on Chicago Avenue. Excuse me. I won't
23 use my finger. I will use a pen. But drove southbound and
24 parked in the front of Cup Foods. They were parked on the
25 east side of Chicago Avenue almost directly in front of Cup

1 Foods. The vehicle was facing south.

2 After the officers, Officer Lane and Kueng, went
3 into Cup Foods, they were directed again by the employee,
4 who pointed out a blue Mercedes-Benz. The blue Mercedes was
5 an SUV. I will refer to it sometimes as a blue Mercedes,
6 sometimes a Mercedes, sometimes SUV. Not trying to confuse
7 you. But they pointed out that the person they believed
8 passed the counterfeit bill was seated in this car. So I
9 indicated with a blue square on the south side of 38th
10 Street east of Chicago Avenue where that was.

11 Now, as another aside, you are going to see a lot
12 of video in this case. One of the types of video you see is
13 what's referred to as body cams or body camera footage. In
14 Minneapolis police officers, at least those in uniform, are
15 equipped with a body camera. This body camera is mounted on
16 their chest. And usually what happens is an officer can
17 activate it by tapping it or doing something like that.

18 But you will actually see the body cam evidence in
19 this case that shows both Officer Lane and Officer Kueng
20 going over to talk to the occupants of that blue Mercedes
21 SUV to figure out what was going on. We, as citizens in
22 this society, expect police to investigate potential crimes.
23 That's what they were doing in this incident.

24 So the two police officers go over to the Mercedes
25 SUV and what you will notice, if you watch this evidence, is

1 you will see that Officer Lane, as he's crossing 38th Street
2 headed over to the Mercedes SUV, notices that the occupants
3 inside this blue Mercedes SUV are moving around. He makes a
4 note of that, in other words, he says that to his partner.

5 Because people moving around can mean different
6 things to different people, but that can draw some
7 suspicions of law enforcement that something may be afoot,
8 either something -- perhaps people hiding evidence or
9 perhaps for their safety. They're worried about someone
10 drawing a weapon.

11 So he made that comment as he's crossing 38th
12 Street. Then Officer Lane goes up to the blue Mercedes SUV.
13 What you will find out about the blue Mercedes SUV is that
14 the person seated in the driver's seat was George Floyd.
15 There was another man in the passenger seat, whose name is
16 Morries Hall. There was a third occupant of that blue
17 Mercedes SUV, a woman named Shawanda Hill.

18 But when the police went over there, Officer Lane
19 went up and he had to knock on the window of the driver's
20 side loudly with his flashlight to get the attention of
21 Mr. Floyd. When you view this evidence, you will see that
22 Mr. Floyd is actually turned away and is doing something
23 with his back towards the driver's side door. So Officer
24 Lane (indicating) loud enough on that window to draw the
25 attention of Mr. Floyd.

1 What he does is he's asking Mr. Floyd to roll down
2 the window, but Mr. Floyd instead opens the passenger --
3 excuse me, the driver's side door. He's still not sitting
4 there and following directions. Officer Lane is rightfully
5 nervous about what's going on inside the car, so he asked
6 Mr. Floyd to put his hands on the steering wheel.

7 What you will learn is that, from a safety
8 standpoint, a person's hands are important for a police
9 officer because that is typically where danger comes from.

10 So he specifically directs Mr. Floyd to put his
11 hands on the steering wheel. Mr. Floyd is protesting at
12 this time stating he's done something wrong. "I'm not that
13 guy." You will hear all this. But he's not putting his
14 hands on the steering wheel.

15 So at this point Officer Lane draws his firearm
16 and directly commands him to put his hands on the steering
17 wheel, and what you will see from the body cam footage is
18 Mr. Floyd's left hand going on there, but his right hand is
19 out of sight.

20 And you -- again, one of the beautiful parts about
21 our legal system is the right to a trial by a jury. You, as
22 the jury in this case, get to decide what the facts are.
23 It's not what I say they are. It's not what any other
24 lawyer says they are. You, as the jury, as a group get to
25 decide what the facts are.

1 But when you watch that video, watch to see what
2 you think Mr. Floyd is doing with his right hand. What you
3 will see is he is reaching towards the center console area
4 of this blue Mercedes SUV.

5 Now, one of the other things that you will learn
6 is that following this incident law enforcement seized that
7 blue Mercedes SUV and took it in for what's called
8 processing. This is where people in law enforcement look
9 for evidence and document what's happened.

10 And you will see photographs from inside that blue
11 Mercedes SUV particularly of that center console area where
12 Mr. Floyd's right hand was. You will find that what they
13 found in there, when police searched that, was indeed
14 counterfeit money. And they also found narcotics in that
15 car, and these are illegal drugs. They were found in that
16 center console area.

17 Now, Mr. Floyd continues to protest, continues to
18 not follow the directions from Officer Lane. Meanwhile, at
19 this time Officer Kueng is on the other side of the blue
20 Mercedes SUV talking to the passengers trying to figure out
21 what's going on and keeping an eye on them.

22 But as Mr. Lane talks to Mr. Floyd, Mr. Floyd is
23 not following his instructions, so Officer Lane orders him
24 to get out of the car. Again, Mr. Floyd refuses to follow
25 instructions.

1 Think about this. We expect law enforcement to
2 investigate criminal behavior. And law enforcement are
3 given powers, one of the many things Ms. Trepel said, but
4 law enforcement have the right and the duty to investigate
5 criminal behavior, and we expect that they will do so.

6 So when Mr. Floyd doesn't want to get out of the
7 car, ultimately Officer Lane begins to pull him out
8 physically. You will see on the video, you will see for
9 yourself that Mr. Floyd is not only not following commands,
10 but he's physically resisting at this point.

11 Officer Kueng, on the other side of the vehicle,
12 notices the struggle and goes around the rear of the blue
13 Mercedes SUV and assists Officer Lane in handcuffing and
14 getting Mr. Floyd completely out of the vehicle. You will
15 see a struggle that was going on at this point. Again,
16 Mr. Floyd is not following commands.

17 By the way, I'm not saying these things as a means
18 to try to denigrate Mr. Floyd. What I'm doing is pointing
19 out what his actions were during this time.

20 So Mr. Floyd is now out of the vehicle, and
21 Mr. Kueng then takes and begins to try to walk him over.
22 And if I can go back over here, at this point the officers
23 are on the driver's side of the blue Mercedes SUV right here
24 (indicating).

25 And what happens is Officer Kueng takes Mr. Floyd

1 over and has him seated down by the wall. The wall is the
2 outside wall of the Dragon Wok restaurant. At this point
3 Mr. -- I'll stand near a microphone. At this point
4 Mr. Floyd is handcuffed.

5 When you look at the body camera evidence, watch
6 and I believe you will notice that at least once, if not two
7 times, Mr. Floyd appears to either attempt to fall down or
8 to sit down as Mr. Kueng is escorting him over to the wall
9 by the Dragon Wok.

10 When he's over at the wall at the Dragon Wok,
11 Officer Kueng asks him, "Can you identify yourself?" He
12 takes Mr. Floyd's name, because Mr. Floyd gives him his full
13 name and date of birth.

14 And then you will notice that there was a
15 Minneapolis Park police officer, Officer Chang, Peter Chang.
16 He arrives as backup.

17 Later in this trial you will hear testimony from a
18 woman named Jenna Scurry. She works for Minneapolis 911
19 dispatch, and she can give you detail about what she calls
20 out when a person does a 911 call, how police and everyone
21 else responds.

22 But there was a back up officer that arrived at
23 this point from the Minneapolis Park Police. He was at a
24 nearby park, but arrived as backup.

25 What you will find out is that the Minneapolis

1 Police Department and the Minneapolis Park Police, who
2 basically patrol the park system of Minneapolis, will work
3 together. They actually attend the same police academy.

4 So Officer Chang shows up. So Officer Kueng gives
5 him Mr. Floyd's name and asks him to run it for warrants.
6 That is to check and see if somebody has a warrant out for
7 their arrest or something like that. It's pretty much
8 routine police behavior.

9 At this point Officer Lane comes back over, and
10 both he and Officer Kueng begin talking to Mr. Floyd.
11 Officer Lane and Officer Kueng at this point appear to be
12 concerned about the behavior of Mr. Floyd. They indicated
13 that he is, quote, acting very erratic and they are asking
14 him if he is, quote, on something, presumably referring to
15 drugs or narcotics of some sort.

16 Officer Kueng even noted that Mr. Floyd had foam
17 around his mouth, and you will see the video of that. And
18 Officer Kueng actually asks Mr. Floyd about that foam.
19 Mr. Floyd appears to acknowledge that and tells the
20 officers, quote, I was hoopin' earlier. When I use the word
21 "hoopin'," I'm spelling it h-o-o-p-i-n. That is a word that
22 you will find out is subject to at least two different
23 meanings. But he acknowledges that he was doing what's
24 called hoopin' earlier.

25 And at this point the two officers then bring

1 Mr. Floyd over. They walk him across -- back northbound
2 across 38th Street towards their squad car. Again, as they
3 are walking him, Mr. Floyd appears to sag down. They are
4 telling him to keep walking.

5 They then arrive on the driver's side of
6 Squad 320, which is parked outside of Cup Foods. At this
7 point again Mr. Floyd is protesting. He appears to not
8 comprehend fully what's going on. And what he tells the --
9 excuse me. The officers tell him to get up alongside the
10 side of the car so they can search him.

11 When officers detain someone, if they have a
12 reason to do so, they are authorized to make sure that a
13 person doesn't have any weapons or the means to hurt them.
14 So they'll perform what's called a pat search, which is a
15 search of the outer part of a person's clothing and
16 sometimes going into their pockets, to make sure there's
17 nothing that that person could use to harm the officers.

18 So Officer Kueng is trying to get Mr. Floyd to
19 lean up against Squad 320 to allow him to perform that
20 search. You will see the body cams. You will hear the
21 protestation. I would point out that Mr. Floyd is not only
22 protesting verbally, he's not following instructions, but
23 he's actually physically resisting.

24 You will hear of a struggle that's going on, and
25 at this point you will start to hear a third voice, a voice

1 from a person that was standing on the side of the road and
2 somehow came over because of curiosity or something, nothing
3 untoward, and began speaking to Mr. Floyd himself. This
4 person was later identified as Charles McMillian. Charles
5 McMillian began saying things to Mr. Floyd like, "Just get
6 in the car, you can't win."

7 Officers search Mr. Floyd. And what do they find
8 in his pocket? They find a small glass pipe commonly used
9 to smoke narcotics. Again, I'm not trying to denigrate
10 Mr. Floyd, but we've now got the drugs that were recovered
11 in the Mercedes and you've got a glass pipe found on
12 Mr. Floyd's person.

13 Now I'd like to shift gears and go back to the 911
14 dispatch. Originally when the call went out, the 911
15 dispatcher sent or dispatched Squad 320 to respond to the
16 counterfeiting call.

17 At this time Officer Thao, my client, and his
18 partner then for the day, Officer Chauvin, responded as
19 backup, much like Officer Chang did. But they were
20 responding from the Third Precinct, which is a little bit
21 east, a couple miles east at least, of 38th and Chicago. So
22 they responded initially as what's called Code 3.

23 Now, you'll hear terminology from police officers
24 that might be a little different to you. You will hear
25 different codes.

1 One is what's called Code 2. And if I'm a police
2 officer and I'm responding to something Code 2, It means
3 drive there but obey the traffic laws. I'm not using my
4 lights or sirens, presumably not making any side trips, but
5 I'm driving directly to the place that I'm going to and
6 observing traffic conditions, in other words, no lights or
7 siren.

8 Code 3 means something different. It means that
9 I'm there to proceed as fast as is safely possible. This is
10 where you see police officers with their lights and sirens
11 on approaching intersections, slowing to go through and then
12 going forward.

13 Code 4 means something different. It means
14 essentially the situation is under control. You will hear
15 from the witnesses themselves from the witness stand behind
16 me, they will explain this much better than I will.

17 But Officers Thao and Chauvin, who are partners
18 for that day, begin responding to the area. First Code 3.
19 Then you will hear Code 4, which means essentially that the
20 situation is under control. So at that point the squad that
21 contains both Officer Thao and Officer Chauvin continues on
22 to go for backup, but they do so without using their lights
23 and siren.

24 As another note, the squad -- excuse me, police
25 squad cars also have cameras that can show things. What you

1 will see from my client, Officer Thao, then-Officer Thao's
2 body camera footage is that you can see the car going and
3 you can see the lights on and you can see them slowing. You
4 will also overhear the conversation.

5 And I would note that they respond -- I would
6 assume one of the things is you will find out that this is
7 either the third or fourth days for both Officer Kueng and
8 Officer Lane as essentially full-fledged police officers.
9 We might disagree about some of the verbiage, but they've
10 completed the field training program and are essentially
11 allowed to go on calls by themselves.

12 But both these officers were paired together that
13 day. They were new, at least in the eyes of my client,
14 Officer Thao. That is one of the reasons that they went and
15 continued for back up.

16 You will also notice from the evidence in this
17 case that while en route my client indicates that the area
18 of 38th and Chicago is what he refers to as Bloods
19 territory.

20 Now, the Bloods are one of several Minneapolis
21 street gangs. They are based in the central area of
22 Minneapolis, and they often wear red clothing to
23 differentiate themselves from other street gang members.

24 Officers Thao and Chauvin ultimately arrive at
25 38th and Chicago. And, again, when you see the body camera

1 footage, they park sort of on the east side of 38th Street,
2 but then decide to pull forward more towards the front of
3 Cup Foods and park on the north side of 38th Street. This
4 is at 8:17 p.m.

5 At this point both Officer Chauvin and Officer
6 Thao exit their squad and walk over to Squad 320 to see what
7 is going on and to see if their assistance is still needed.
8 And what you will see is at this point Officer Chauvin
9 arrives first, Officer Thao behind him, but when they
10 arrive, there's a struggle going on. At this point Officer
11 Kueng and Officer Lane are struggling trying to get
12 Mr. Floyd to get in the backseat of the squad car.

13 And think about this. What they're really doing
14 is they're trying to do what's called detain him to allow
15 them to complete their investigation about whether any sort
16 of a crime has been committed. Mr. Floyd is still not
17 responding to their commands and he's physically resisting
18 them.

19 At this point when the officers arrive, Officer
20 Lane is now on the passenger side of Squad 320, basically --
21 so he's standing almost in the lane of Chicago Avenue if I
22 was driving northbound on Chicago Avenue. But they're
23 struggling trying to get Mr. Floyd in the car. And at this
24 point, then, Mr. Lane is on the other side trying to do it.

25 Officer Chauvin goes around to the passenger side

1 as well too, and then you will see that Mr. Floyd basically
2 ejects himself out of the passenger -- the rear part of
3 Squad 320 and begins to struggle physically with both
4 Officer Lane and Officer Chauvin.

5 Officer Kueng is at this point back on the
6 driver's side of the car, but he quickly goes around, as
7 does my client following him, around the rear part of
8 Squad 320 to figure out what's going on.

9 At this point, then, my client, Officer Thao,
10 comes back around the blue Mercedes SUV. He opens the rear
11 squad door and looks in to see what's going on. And you
12 will see from his body camera footage that Mr. Floyd, even
13 in handcuffs, is still struggling mightily with the
14 officers.

15 You will see at some point Officer Chauvin, I
16 believe, and I'll let you decide what the video shows, with
17 his arm around trying to get him out of the car so they can
18 deal with Mr. Floyd.

19 Ultimately my client closes the door and goes back
20 around. That's about the time that Mr. Floyd is finally out
21 of the car and is placed on the ground.

22 Now, when Mr. Floyd is placed on the ground, he's
23 placed first, I think, on his back, but then laid over
24 facedown in what, again, you will learn is something called
25 the prone position.

1 And the other three officers, Officer Chauvin up
2 near the head area, Officer Kueng on the middle of
3 Mr. Floyd, and Officer Lane by his feet or the leg area,
4 these officers are then holding him down in this position,
5 they are restraining him. And at this point there's a
6 discussion about what to do.

7 You, again, will hear what the officers were doing
8 during this time, who was saying what to who, but at some
9 point the officers request what's called an MRE, which
10 stands for maximum restraint something, equipment, I
11 believe, MRE. Sometimes this is referred to what's called
12 the hobble device.

13 And what this is is this is a means of, when
14 somebody is resisting, to put them in a maximum restraint.
15 Their handcuffs are behind their back. They would attach
16 this device too somehow and restrain his feet so the person
17 really can't do much of anything.

18 But at that point, then, Officer Thao goes back
19 and opens the rear compartment to Squad 320 and begins going
20 through a bag. It might seem like it takes a while for him
21 to find that, because it's not his squad car and there are
22 what are called duty bags in the back of the squad belonging
23 to each of the other two officers.

24 So Officer Thao is attempting to locate this
25 hobble device in these duty bags. He ultimately finds it

1 and goes over and offers it to them, but at that point the
2 decision is made not to use that maximum restraint
3 equipment. Officer Thao then inquires if medical assistance
4 has been requested.

5 Now, I'm going to step aside. In this case you
6 will hear terminology that -- things like EMS. That stands
7 for emergency medical services. And, again, when Jenna
8 Scurry, who is the dispatcher from Minneapolis 911, she can
9 elaborate on this, but what you will learn is that when
10 police officers believe that medical assistance may be
11 required, they will ask for EMS, emergency medical systems.

12 And so at this point Officer Thao asks if EMS has
13 been requested and is told that it has been. Officer
14 Thao -- apparently this was done when he was back looking
15 for the hobble device. But as he's sitting there trying to
16 determine what to do, they clarify that EMS has been
17 requested and essentially what level. They say Code 2.

18 So Officer Thao then gets on his radio. And one
19 of the things you will learn about is what type of equipment
20 police officers have, but he's got a radio that allows him
21 to communicate via police dispatch channels on his left
22 shoulder.

23 So Officer Thao then uses his radio to ask
24 dispatch to do what's called step up the emergency medical
25 service response to Code 3. That's, again, lights and

1 siren. They clarify that that is what they are going to do,
2 so they do that.

3 While Officer Thao is standing next to the squad,
4 he learns that a pipe had been discovered in the search of
5 Mr. Floyd and turns and actually asks Mr. Floyd, "What are
6 you on?" You can draw your own conclusions, but I think
7 it's pretty clear that my client, Officer Thao, is wondering
8 why Mr. Floyd is behaving in the manner in which he is. And
9 at this point emergency medical services has already not
10 only been requested, but asked to step up and arrive as soon
11 as possible.

12 Now, going back to my map -- I'm going to go back
13 to the first exhibit that I showed you. Okay. So, again,
14 we have the central neighborhood, which is essentially --
15 can you see this? Here (indicating) is the central
16 neighborhood. And I believe it's sort of near this area of
17 the central neighborhood, right here (indicating) that is
18 38th and Chicago.

19 But the emergency medical services have been
20 requested, and it comes in this particular part of
21 Minneapolis from what's called Hennepin Healthcare.
22 Hennepin Healthcare is kind of a new acronym for what we
23 used to call Hennepin County Medical Center or, back in my
24 parents' day, General Hospital, which is located downtown
25 somewhere in this area (indicating). So it's not that long

1 of a drive for them to get there.

2 At this point, because Mr. Floyd is restrained,
3 you will see video showing my client standing there, as
4 Ms. Trepel pointed out a number of different times, standing
5 there trying to figure out what to do.

6 Clearly, Mr. Floyd does not need an additional
7 officer restraining him, so he essentially acts as what's
8 called, in his own words, a human traffic cone to try to let
9 oncoming traffic know that there's a police officer here.
10 Maybe they will see him if they don't see the other officers
11 on the ground.

12 And at this point you will start to see that a
13 crowd is beginning to form on the sidewalk. If I am where
14 Officer Thao is and the car is over here (indicating), the
15 crowd is forming in front of him on the sidewalk on the east
16 side of Chicago Avenue in front of Cup Foods.

17 You will hear that a group of people came there
18 and they began interacting with the officers. This is
19 essentially when that Facebook video that went viral was
20 begun to be taken.

21 But that Facebook does not capture what all the
22 entirety of the situation would have happened there before
23 that allows you to understand what the police officers were
24 thinking and why they were taking the action that they did.

25 Now, what you will hear is names like Darnella

1 Frazier. She is the young woman who took that video.
2 Another woman named Alyssa Funari. Charles McMillian, he is
3 the gentleman who is the first one talking to Mr. Floyd.
4 You will hear him say repeatedly, "You can't win" and "Get
5 in the car." Then you will hear about another person named
6 Donald Williams. And, finally, another person named
7 Genevieve Hansen, who is an off-duty Minneapolis firefighter
8 who happens upon the scene.

9 Now, all these people came and, as Ms. Trepel told
10 you, they began observing and they began objecting, and
11 they're getting more vociferous. Now, again, I point out
12 something. What I say is not evidence. You, as the jury,
13 get to decide what is the evidence. But look to that crowd
14 and you will see them objecting and getting louder and
15 objecting more to what they perceive is happening.

16 But one of the things that no lawyer can change is
17 that none of those people knew any of what was going on
18 before that point, save for Mr. McMillian, who I believe you
19 will hear began observing this as Mr. Floyd is being walked
20 across 38th Street by the two officers. Other than that,
21 none of those people on that sidewalk knew what was going
22 on.

23 Now I'm going to speak briefly about the charges,
24 as did Ms. Trepel. My client, Mr. Thao, is charged with
25 violating the Constitution of the United States. That is

1 why we are in this courtroom. He is not charged with
2 violating any state law. But he's charged with violating
3 the Constitution essentially in two ways.

4 And, again, one of the things that I will point
5 out is that I may talk to you about the law and the facts,
6 but you, as the jury, get to decide what facts have and have
7 not been proven in this courtroom, no matter what I or any
8 other lawyer says.

9 The second point that I want to make clear is that
10 it is not my job as a lawyer to tell you what the law is.
11 That is solely the responsibility of the court, and I have
12 no doubt that Judge Magnuson will instruct you on what the
13 law is.

14 But essentially the two charges against my client
15 are that he violated the Constitution by, one, failing to
16 intervene when Officer Chauvin was using force, accused of
17 being unreasonable force, under the circumstances. That's
18 the first count.

19 The second count is that he violated the
20 Constitution because he was what's called deliberately
21 indifferent to the serious medical needs of a person, in
22 this case Mr. Floyd.

23 Now, both of these charges require that the
24 government prove specifically that my client was acting
25 willfully in taking each of those respective allegations.

1 The court will tell you what "willfully" means. It is not
2 my place to do so.

3 As in any criminal case, Mr. Thao is presumed to
4 be innocent of these charges and the burden is solely on the
5 government to prove these allegations beyond a reasonable
6 doubt.

7 Now, in conclusion, I think we all understand that
8 police officers are often called to deal with situations
9 where they have little information. These can be difficult
10 situations. They can be dynamic and changing situations.
11 They can be very dangerous situations at times.

12 And if you look at the people that they are
13 dealing with, oftentimes these people are emotional, they
14 are scared, they are angry, and oftentimes they've either
15 been using or under the influence of some sort of chemicals.

16 Police actions are often very difficult to
17 understand and fully comprehend in a vacuum, and I don't
18 want you to do that in this case. That's why it is
19 important that you focus on all the evidence, not just what
20 happens once the crowd begins to show up.

21 This case involves the use of force by police
22 officers. Use of force is often disturbing to watch and
23 difficult to comprehend, even if the best of circumstances.

24 In this case, the video that shows this is both
25 graphic and disturbing. It can be difficult to watch.

1 That's one of the reasons that I believe the court inquired
2 of you as potential jurors if you were able to do that. But
3 you will be required to do that.

4 Now, as I stated at the outset of my opening
5 statement, the events that occurred that day are indeed a
6 tragedy, but the fact that something ends tragically does
7 not mean that a crime has been committed.

8 The fact that Mr. Floyd lost his life under tragic
9 circumstances, it is a tragedy, just as loss of any human
10 life, but that does not mean that the actions of Mr. Thao
11 were criminal.

12 In this case, at the end, once you've heard all
13 the evidence, I will stand before you and I will ask you to
14 render the only verdict that will be justified under the
15 circumstances and that, ladies and gentlemen, is a verdict
16 of not guilty on all counts.

17 Thank you very much for your time.

18 THE COURT: Thank you, Mr. Paule.

19 Mr. Plunkett.

20 MR. PLUNKETT: May it please the court, Ms. Bell
21 and your team, Mr. Paule, Ms. Paule, Mr. Thao, Mr. Gray,
22 Mr. Lane, friends, family, supporters, members of the jury.

23 This case is about a tragic event in our nation's
24 history that most of, if not all, have viewed through social
25 media and various news sources.

1 As they say, things can't be unseen, but that
2 video, that video is not what Alex Kueng saw. It's not what
3 Alex Kueng perceived and it's not what he experienced on
4 May 25, 2020. Please keep in mind that the video that you
5 saw, the video that may be etched in your minds has little
6 to nothing to do with what Alex Kueng saw and perceived.

7 In fact, I anticipate that you will hear from at
8 least one witness that an eyewitness from the sidewalk had
9 no idea that Alex Kueng and Mr. Lane were even there. They
10 couldn't see him. He couldn't see them. And Alex Kueng
11 certainly could not see or react to what the people on the
12 sidewalk were seeing and reacting to.

13 This case is about a tragic tale, about a rookie
14 officer, a rookie less than three full shifts out of his
15 career -- into his career as a Minneapolis police officer
16 that was confronted with an extraordinarily complex, rapidly
17 unfolding set of circumstances.

18 The evidence is going to show that Mr. Kueng --
19 he's going to stand and take off his mask. Thank you. Have
20 a seat. -- was thrust into these events with, one,
21 inadequate training; two, lack of experience; three, a
22 perceived subordinate role to Officer Chauvin; and, four,
23 confidence in Officer Chauvin, a senior officer, not only a
24 senior officer, Officer Chauvin, but also Alex Kueng's field
25 training officer or FTO just two and a half shifts before

1 the encounter with Mr. Floyd.

2 A field training officer or FTO is an officer
3 chosen by the City -- by the Minneapolis Police Department
4 to mentor and train a recruit immediately after the recruit
5 finishes the Minneapolis Police Academy. You will learn,
6 through the evidence, that an FTO has considerable sway,
7 considerable power over a recruit's future.

8 These four items, which are failures on the part
9 of the Minneapolis Police Department, combined with a
10 confrontational crowd, created a dynamic, unusual, and,
11 frankly, foreign situation. Alex Kueng did his even best to
12 do his job, just the way he'd been trained.

13 In the end, the evidence will show that on
14 May 25th, 2020, George Floyd, our entire community, and Alex
15 Kueng were let down by the Minneapolis police
16 administration.

17 My name is Tom Plunkett. It is a great honor to
18 be here. It is a privilege to be a lawyer in America and to
19 serve our constitutional principles that so many have given
20 so much to preserve and able to stand before you in this
21 distinguished court and be given the honor of serving as
22 Alex Kueng's attorney.

23 This is an opening statement. It is meant to be
24 my opportunity to give you an overview or a road map to the
25 case. I'm supposed to tell you what the facts, many of

1 which were left out by the government, will show.

2 So here's what I'm going to do in the next half
3 hour or so. I'm going to introduce you to some of the key
4 players. I'm going to introduce you to the police officers.
5 I'm going to introduce them to you because they are not
6 abstract beings. They are people. They are people with
7 lives and families and dreams of careers. And then I'm
8 going to just outline what Mr. Kueng, my client, Alex Kueng,
9 believes the facts will show. And then, finally, I'm going
10 to talk a little bit about the law and the burden of proof.

11 Understanding who we are talking about is a fact
12 that you need to consider to make the important decisions
13 about whether Mr. Kueng acted willfully. Very important
14 word.

15 The court will define "willfully" for you, and you
16 must follow the court's definitions. I'm going to
17 paraphrase and try to sum it up for you, but I don't give
18 you the law. The court gives you the law. Any law that I
19 give you is not the law because it hasn't come from the
20 court.

21 I do anticipate that the court will instruct you
22 that "willfully" means committing acts with a bad purpose or
23 improper motive, to disobey or disregard the law,
24 specifically intending to deprive Mr. Floyd of his rights.
25 That is a paraphrase of what "willfully" means.

1 You, as a jury, need to decide this important
2 question of willfulness. In doing so, you will hear and see
3 evidence. I respectfully submit to you the evidence is not
4 simply data marks in time during a 20-minute encounter
5 between Mr. Floyd, Alex Kueng, and the other officers on
6 May 25th, 2020. Instead, the facts need to be considered in
7 light of the people who participated.

8 To answer this willful question, to determine if
9 there's a bad purpose or improper motive, you will need to
10 know just who these people are, where they came from. And
11 so I am going to introduce them to you. Who are the people?
12 Alexander Kueng.

13 Mr. Kueng was just 26 years old when these events
14 unraveled. He grew up in a culturally and ethnically
15 diverse home in a culturally and ethnically diverse area of
16 Minneapolis, that is, North Minneapolis. Alex Kueng's
17 mom --

18 MS. BELL: I'm going to object at this point.

19 THE COURT: I'm sorry. I couldn't hear.

20 MS. BELL: Objection, Your Honor.

21 THE COURT: Overruled.

22 Proceed.

23 MR. PLUNKETT: Alex Kueng's mom, Joni Kueng, a
24 teacher in North Minneapolis, is white. Alex Kueng's
25 absentee father was Nigerian. He died at a fairly young

1 age. Ms. Jodi Kueng later adopted four at-risk youth,
2 making Ms. Kueng the only white person in the home where
3 they grew up. Ms. Joni Kueng, Alex's mom, is a teacher in
4 North Minneapolis, just as her father was.

5 Alex Kueng did not grow up dreaming of being a
6 police officer. He dreamed of being a professional soccer
7 player and to his credit --

8 MS. BELL: Your Honor, objection.

9 THE COURT: Yeah, I think, counsel, we're starting
10 to get away a little bit from the case. I'm going to ask
11 you to cut the introduction short.

12 MR. PLUNKETT: The point is that neither he or his
13 family had any romanticized notions about the police and
14 their community.

15 Alex Kueng's path to a career in law enforcement
16 came to him later. He felt there needed to be a change in
17 policing, and the only way to accomplish that was to take
18 the problem on firsthand. He wanted to create change from
19 within.

20 To make this happen, Alex Kueng, a 2012 graduate
21 of Patrick Henry High School, finished his college degree at
22 the University of Minnesota, getting a BA in sociology of
23 law, criminology and deviance in 2018. He had worked loss
24 prevention for two department stores while in college.

25 In anticipation of completing his college degree,

1 he began the Minneapolis Police community service officer
2 program. That was in December 2017. The community service
3 officer program or CSO is a traditional -- pardon me,
4 transitional job for people seeking to become Minneapolis
5 police officers. On February 19, 2019, Mr. Kueng began his
6 orientation at the Minneapolis Police Academy.

7 Mr. Thomas Lane was Alex Kueng's partner on
8 May 25th, 2020. Interestingly, Alex Kueng and Lane attended
9 the same police academy class. Mr. Lane had completed one
10 more shift than Alex Kueng, and what that means is that
11 Kueng and Lane had five post-FTO shifts between them when
12 they were placed as partners in the same squad car.

13 You will find out through the evidence that it's
14 not uncommon in Minneapolis to place inexperienced officers
15 together. It has to do with how the officers bid their
16 assignments.

17 Basically, officers bid to be on a specific
18 vehicle, a squad car. Generally, there are three to five
19 officers assigned to a squad car, and that assignment is
20 determined by a bidding system where the senior officers
21 pick first. So obviously they pick their friends.

22 Mr. Lane is older than Mr. Kueng by about ten
23 years. After high school, Lane worked in construction for a
24 bit. Then found his way back to college. Both Kueng and
25 Lane have degrees in sociology of law, criminology and

1 deviance from the University of Minnesota at different
2 times. Mr. Lane has worked in juvenile corrections for both
3 Ramsey and Hennepin County.

4 Kueng and Lane had never met prior to joining the
5 police academy class on February 19th, 2019.

6 Mr. Lane is represented by Mr. Earl Gray.

7 Mr. Tou Thao. On May 25th, 2020, Mr. Tou Thao was
8 working with Derek Chauvin in Squad 330. Mr. Thao has about
9 ten years of experience, eight to ten years' experience as a
10 police officer in the City of Minneapolis. He also began
11 his career as a CSO, the same program that Mr. Kueng
12 participated in.

13 Officer Thao was driving Squad 330 on the day
14 these events transpired. His role was to stand between the
15 officers and the crowd that gathered. That fact will be
16 shown by several different videos of this event.

17 Mr. Thao is represented by Bob Paule and
18 Ms. Natalie Paule.

19 Officer Derek Chauvin was the most senior officer
20 on the scene on May 25th, 2020, with approximately 19 years
21 on the street. He was the most senior officer by about nine
22 or ten years.

23 Officer Chauvin has been an FTO or field training
24 officer in the Third Precinct for a very long time. In
25 fact, in fact, he was Alex Kueng's FTO. Mr. Lane, who was

1 in FTO at the same time as Alex Kueng, they worked the same
2 shift as Officers Chauvin and Kueng.

3 You will find out through the evidence that the
4 FTO has great control over young officers' future in the
5 Minneapolis Police Department. The recruit, which is what
6 an FTO -- what an officer on FTO, is called, is referred to,
7 can be terminated from the department at the FTO's
8 recommendation.

9 You will find that each recruit by policy is
10 required to have four different FTOs and work in two
11 different precincts. That is part of the FTO training
12 policy.

13 That did not happen with Alex Kueng and Officer
14 Chauvin. Instead, Officer Chauvin was Kueng's FTO for two
15 of the four phases of Mr. Kueng's, Alex Kueng's, FTO
16 experience. A review of Alex Kueng's recruit officer
17 performance evaluations or ROPEs, will reveal that Officer
18 Chauvin was the FTO for 42 out of roughly 79 or so shifts
19 that Alex Kueng worked during his FTO experience. While
20 that violates MPD policy, that is what you will find out.

21 The evidence will show that Officer Chauvin took
22 over control of the scene on May 25th, 2020. You may hear
23 that MPD policy states that the senior officer in the first
24 car to arrive is in charge. If that were true, that would
25 mean Mr. Lane, who was partway through his fourth shift as a

1 police officer, was in charge.

2 Despite that policy, you will see that Officer
3 Chauvin was clearly in charge once he arrived. You will
4 hear Officer Kueng -- pardon me. You will hear Mr. Kueng
5 and Mr. Lane call him "sir" and you will see and hear him,
6 Officer Chauvin, call all of the shots.

7 Chief Arradondo is a recently retired Minneapolis
8 police chief. He began working for the Minneapolis Police
9 Department in 1989. You will hear some evidence about the
10 Minneapolis Police Department's duty to intervene. Chief
11 Arradondo wrote that policy I believe, the policy on duty to
12 intervene, in 2016. He later became the chief in
13 approximately August 2017.

14 The facts will show that, although he wrote the
15 policy on the duty to intervene, he never mandated
16 scenario-based training on the duty to intervene after he
17 drafted the policy and never implemented scenario-based
18 training after he became the chief of police. The facts
19 will show that he was aware of the problems with the FTO and
20 the training program as early as 2017.

21 Inspector Katie Blackwell, a police inspector, is
22 a very high ranking officer in the Minneapolis Police
23 Department. There are only three or four ranks higher than
24 the inspectors, including the rank of chief.

25 Inspector Blackwell was in charge of training at

1 the times leading up to and after May 25th, 2020. You will
2 learn that Inspector Blackwell was well aware of the
3 problems in Minneapolis Police Department Academy and FTO.
4 I anticipate that you will find out -- Inspector Blackwell
5 will testify about the programs that she oversaw and changes
6 that she implemented.

7 I also anticipate that she will provide
8 information about the ROPEs, the recruit officer performance
9 evaluations, what those ROPEs consider and the criteria for
10 evaluating an FTO.

11 You will also learn that Inspector Blackwell has
12 known Officer Chauvin for quite some time and, in fact,
13 approved him to be an FTO.

14 Inspector Blackwell will testify about the
15 expectations on the duty to intervene. But, more important,
16 an expectation is the amount and level of training recruits
17 and officers receive.

18 When Inspector Blackwell is testifying, the
19 biggest question will be: Does the training illuminate the
20 expectations of the department? That is, because if an
21 officer leaves the training and they can't implement the
22 lesson, the training has failed.

23 You will learn that the academy training on
24 intervention is little more than a word on a PowerPoint, an
25 officer reading the policy and then giving a couple of

1 examples of what excessive force are.

2 There's going to be other trainers that are going
3 to testify. You will also hear from several other police
4 officers who were involved in the training in the
5 Minneapolis Police Department Academy. They are all very
6 important.

7 They are important since they will help you
8 understand what is trained, what is retained, and what
9 experienced officers who are directly involved in the
10 implementation of training and policy know and understand
11 about what is taught and the general knowledge of policies.
12 There's going to be several of them. There might be an
13 officer named Dinh, Soucy, Dick.

14 I know you are going to hear from a training
15 officer named MacKenzie. She doesn't do use of force. She
16 does medical training. While all are trained to initiate
17 CPR if there is not a pulse, there isn't a lot of training
18 in how to apply that in the field.

19 You will hear testimony from many officers who I
20 have not mentioned, and I'll talk about that testimony in my
21 closing.

22 To talk about all the testimony that every officer
23 is going to provide you during this trial, I would have to
24 talk on and on until the end of time and then I would not be
25 very popular.

1 You will hear from a distinguished cast of medical
2 professionals, all of whom know much more about medicine
3 than all of the officers in the Minneapolis Police
4 Department combined.

5 I did not mention the several bystanders who will
6 testify. That's not an oversight on my part. I left them
7 out because what they saw and what they reacted to is not
8 what Alex Kueng saw, not what Alex Kueng perceived, and not
9 what he reacted to. The evidence will also show that Alex
10 Kueng did not see this event through their eyes.

11 I anticipate the court will instruct you that you
12 must consider these events as they were perceived by the
13 individual officers as they occurred with no application of
14 20/20 hindsight. You should take the instruction as it
15 comes to you from the court.

16 One witness you will not hear from is George
17 Floyd. You will hear, however, and see a lot about
18 Mr. Floyd, how he came to meet the four officers on
19 May 25th, 2020.

20 You will learn that this is not a nine-minute
21 encounter or 20- or 30-minute encounter. You will learn
22 that this case is not about forgery and that the forgery had
23 very little to do with why Mr. Floyd was detained on
24 May 25th, 2020.

25 You will learn that what started out as a forgery

1 changed quickly into an investigation of Mr. Floyd's unusual
2 conduct. When the police approached him and asked him to
3 see his hands, you will learn why Officer Lane and Officer
4 Kueng became concerned when Mr. Floyd reached for the center
5 console of the car he was driving rather than simply showing
6 his hands, as he was requested to do.

7 I'm going to go over the details of the case, but
8 I'm not going to do it in as detailed a fashion as Mr. Thao
9 [sic] did. I'm not here to repeat the same things. You've
10 heard it once. I'm going to hit some highlights. You don't
11 need to hear it again.

12 I've already pointed out that this began as a
13 forgery call and changed shortly after the newly minted
14 Officer Kueng and Lane had contact with Mr. Floyd and his
15 two cohorts. Those are Mr. Hall and Ms. Hill.

16 It's fairly simple. The officers arrived. They
17 went into the business. They met with the owner or the
18 manager to find out what was going on, and then they walked
19 across the street. That's where the blue SUV was that
20 Mr. Paule has already talked about. They had concerns, as
21 Mr. Paule has already pointed out, because of Mr. Floyd's
22 actions.

23 Another reason they had concerns is because
24 there's two of them, two of the officers, and three of the
25 other people. It's a numerical imbalance.

1 There is a struggle at the car, at the squad car.
2 Mr. Floyd is, frankly, not cooperative. And eventually they
3 get him to the squad car, not because of the forgery, but
4 because they need to investigate what's going on here. They
5 need to figure out what this unusual behavior is. They've
6 got a person who is potentially impaired sitting behind the
7 wheel of a car. They've got odd behavior.

8 Watch the video from the -- I believe it's called
9 the Milestone camera from across the street. I think you
10 already saw a screenshot of it. Watch the car during the
11 struggle, because you have to understand that this is more
12 than a nine-minute encounter. This was a serious struggle.
13 Watch the car. It almost seems like it rocks back and forth
14 from the force of the struggle between the two officers and
15 Mr. Floyd and later three officers.

16 Mr. Chauvin arrives, Officer Chauvin, and he
17 begins taking over the whole case, the whole scene. He
18 becomes the shot caller.

19 You are going to be watching these videos, and I
20 assume that someone's going to give you a transcript of it;
21 the government. Please don't let the transcript be a
22 substitute for what you see and hear. If it's important,
23 you see it in the transcript and you think it's important,
24 if it's important to you, I respectfully would ask that you
25 take the time to compare it to the video as carefully as you

1 can. Listen. Don't just read.

2 You are going to find out that the officers were
3 told that there's a thing in the policy called a neck
4 restraint, but they were never trained. Officer Kueng and
5 Lane were never trained on the neck restraint. You are
6 going to find out that senior officers, officers that have
7 been around longer, know things that rookies don't. They
8 know techniques. They are trained on other things.

9 You are going to find that Mr. Kueng did, in fact,
10 check the pulse of Mr. Floyd and immediately reported that
11 to Officer Chauvin. "He doesn't got one." "Huh?" "A
12 pulse." He doesn't have a pulse. He checked a radial
13 pulse, not a carotid pulse. He's replaying that information
14 to the person most able to check a carotid pulse.

15 The medics arrive. They check a pulse.
16 Consistent with their training, they do not immediately
17 start doing CPR at the scene because in their estimation the
18 scene was not safe yet. They took him someplace else to
19 provide medical care and safety.

20 So what's the law here? And Mr. Paule's touched
21 on the law, but I'm going to go over it independently.

22 Alex Kueng is charged with two counts in his
23 criminal indictment. Both counts of the indictment charge
24 him with deprivation of civil rights. Although each count
25 is an alleged violation of the same statute or law, the

1 counts, they have different elements. So they're, Count 2
2 and Count 3, the same statute, but different elements.
3 Elements are what the government needs to prove to you by
4 proof beyond a reasonable doubt.

5 In Count 2 it is alleged that Alex Kueng and
6 Mr. Thao deprived Floyd of his right to be free from an
7 unreasonable seizure during the arrest on May 25th, 2020.

8 In Count 3 it is alleged that Alex Kueng deprived
9 Mr. Floyd of liberty without due process of law by acting
10 with deliberate indifference to his serious medical needs.

11 Now, the judge, as I've already said, will
12 instruct you on what the law is in this case. What I say is
13 not the law. And if there is a difference, you must go with
14 what the judge tells you.

15 There are four elements to each of these offenses,
16 four things the government has to prove. For now I'm going
17 to focus just on the second of those four elements, that is,
18 that the government has to prove that Alex Kueng acted
19 willfully. I keep putting emphasis on that word because
20 it's an important word.

21 To act willfully means that it must be proven that
22 Alex Kueng acted with a bad purpose or improper motive to
23 disobey or disregard the law, specifically, intending to
24 deprive Mr. Floyd of his rights. Again, you need to take
25 the law as the court gives it to you.

1 It does not need to be proven, however, that Alex
2 Kueng had a specific familiarity with the Constitution.
3 That's not the point. However, the government does need to
4 show that Alex Kueng had a specific intent to deprive George
5 Floyd of a right protected by the Constitution. That
6 specific intent must be proven.

7 If it is not shown that there was a willful act
8 with specific intent to deprive Mr. Floyd and not just
9 shown, but shown by proof beyond a reasonable doubt, the
10 crime is not proven.

11 In Count 3 the government must prove that Alex
12 Kueng acted with deliberate indifference. That means that
13 the government must prove that George Floyd suffered from
14 one or more objectively serious medical needs and that Alex
15 Kueng knew of the serious medical needs, but deliberately
16 disregarded George Floyd's medical needs.

17 That's my summary of the law. The court will tell
18 you what the law is. The point is this: In Count 3
19 Mr. Kueng is not guilty if the government fails to show,
20 first, knowledge of the specific medical need and a
21 deliberate disregard.

22 The legal principle I have mentioned is proof
23 beyond a reasonable doubt. That is proof -- the burden of
24 proof that the government must meet before you, as a jury,
25 could find Mr. Alex Kueng guilty.

1 So what is proof beyond a reasonable doubt? It is
2 proof of such convincing character that a reasonable person,
3 a jury, after careful consideration, would not hesitate to
4 rely and act on in the most -- in life's most important
5 decisions. Proof beyond a reasonable doubt is proof that
6 leaves you firmly convinced of Mr. Alex Kueng's guilt. That
7 is not to say that it's proof beyond all possible doubt, but
8 the point is, the decisions you make in this case are one of
9 the most important decisions in life.

10 After the close of the evidence, I will give you
11 my closing argument. At that time I will talk to you about
12 what the evidence has failed to show. I will provide you
13 argument.

14 Throughout these proceedings the government, as
15 you can see, always goes first. That changes for closing
16 arguments, though. They still go first, but they have an
17 opportunity to come back and talk to you again after the
18 defense lawyers are done.

19 Common sense, please bring that to this case.
20 Please bring worldly experience. Please bring an
21 understanding of human nature and conduct. Because we can
22 sit here and talk about what the law is, but in the final
23 analysis, all cases and everything we do is about people.

24 In the end, the evidence will not show that Alex
25 Kueng is guilty, and you will have a duty to return a

1 verdict of not guilty on both counts.

2 Thank you.

3 THE COURT: Thank you, Mr. Plunkett.

4 Members of the jury, let's take a noon recess at
5 this time.

6 I would caution the members of the jury that you
7 still haven't heard any evidence in this case. You heard
8 opening statements by three of the people. There is still
9 one opening statement that will be taken after we come back
10 from lunch. And so, with that, I caution you not to discuss
11 the case, to keep an open mind.

12 And we will stand in recess at this time and be in
13 recess until 2:00 this afternoon.

14 We are in recess.

15 The jury may be excused.

16 (Lunch recess taken at 12:28 p.m.)

17 * * * * *

18 (1:51 p.m.)

19 **IN OPEN COURT**

20 **(JURY NOT PRESENT)**

21 THE COURT: Counsel, I came in a couple minutes
22 ahead of the jury. I've now had an opportunity to review
23 the stipulation with respect to exhibits to be admitted, and
24 we'll do that at the appropriate time, but two questions.

25 One is: Mr. Paule, on behalf of Mr. Thao, you

1 were objecting to a series of the exhibits. I first of all
2 want to learn, I guess, from the government, what's your
3 position with respect to that objection?

4 MS. BELL: So, Your Honor, as I understand the
5 objection from Mr. Paule, it is that materials about
6 training received by Officer Lane or Officer Kueng don't go
7 to his knowledge in this.

8 THE COURT: I think that's right. My guess is
9 that -- well, as near as I can tell, they're either exhibits
10 that relate to later-day, if you can use that word,
11 later-day training materials through which Mr. Thao may not
12 have been privy or they may be kind of personnel records
13 relating to Mr. Kueng or Mr. Lane.

14 MS. BELL: Right. So just like, Your Honor, when
15 we have like a multiple-defendant trial and one person has a
16 felon in possession and one doesn't, we're in kind of that
17 dynamic.

18 THE COURT: Yeah, I think we are.

19 MS. BELL: And so --

20 THE COURT: We're building up to it, because I'm
21 looking at what your position is. If your basic position is
22 sort of agreement with Mr. Paule that this doesn't apply,
23 then I should give a limiting instruction to the jury that
24 they don't -- these exhibits don't apply.

25 MS. BELL: I think maybe the way, judge, to give

1 the limiting instruction, because I agree that one certainly
2 could be given here, but I might suggest that the court just
3 make it broader to the jury that exhibits are evidence that
4 pertain to only one -- that don't pertain to all of the
5 defendants, should only be considered for the defendant to
6 which they pertain. And that way we've covered all of the
7 defendants and aren't doing something special, because
8 Mr. Lane has training that Mr. Kueng doesn't have, like
9 there's differences amongst them all.

10 THE COURT: I understand what you are saying.

11 MS. BELL: Yeah.

12 THE COURT: But I need to come down to you,
13 Mr. Paule. After Mr. Gray's completed his opening, we will
14 take a break and then come back in to hear testimony. And
15 my guess is that when I come back, I should receive all of
16 these exhibits that are stipulated to be entered simply
17 because it goes in a hurry. But as to those that you have
18 an objection, I could make a blanket statement of that
19 objection or I could wait for you to object when that
20 specific exhibit comes up. And I leave it to you as to
21 which you'd rather have me do.

22 MR. ROBERT PAULE: Your Honor, thank you for
23 asking. I think, from my point of view, I think a blanket
24 noting the objection and giving a cautionary instruction
25 would be appropriate. I don't think I need to stand up here

1 and make a show in court.

2 THE COURT: Okay. That's fine.

3 Then I'll turn to Mr. Gray and Mr. Plunkett, as
4 Ms. Bell suggested that I try to make this applicable to
5 everybody, that if it applies only to this one defendant, it
6 does apply to this defendant and not to the other
7 defendants.

8 MR. GRAY: Yes, Your Honor. I guess I'm not
9 supposed to stand up. Yes, I would ask for the same type of
10 instruction from this ruling.

11 THE COURT: Okay. Mr. Plunkett, what's your feel?

12 MR. PLUNKETT: I feel the same way as Mr. Gray
13 does. And just to clarify, Your Honor, I don't think it
14 would work if you just gave it once at the beginning of, you
15 know, Mr. Paule's evidence that Mr. Paule's worried about.
16 I think when something comes up that's only applicable to
17 one defendant, we should get the instruction every time.

18 THE COURT: Okay. Well, why don't -- if I may, I
19 will give this blanket instruction first, that it's
20 applicable only to that defendant to which it is directed.
21 Then I will give the blanket instruction that Mr. Paule has
22 gone through the work of establishing for us. And then as
23 exhibits come up, I leave it in your hands if you feel that
24 you need to stand up and ask for the limiting instruction,
25 again, we'll consider it at that time. Okay. That's that

1 part.

2 The other part that is not offered at this time,
3 but I think we might be getting to it, and that is the still
4 pictures taken from the videos that Mr. Gray has stated an
5 objection to, this might -- I think just a general
6 objection. Any further comments about that?

7 MR. GRAY: Well, Your Honor, we have the video.
8 We've seen the video. The witnesses will testify as to what
9 they saw when they took the video. And now they're trying
10 to get -- now they're going to use pictures of the video for
11 the jury which just enhances the certain part of the video,
12 which is totally unfair to the defendant, I believe.

13 THE COURT: Okay. Ms. Bell.

14 MS. BELL: Your Honor, a still photo doesn't
15 enhance any part of the video. It simply allows us to pause
16 the video in a precise way. Anyone who's spent any time
17 trying to pause the video, when you want to pause it, knows
18 it doesn't go well and it actually takes a little bit of
19 time. And so this will actually be more efficient because
20 we won't have to call the video, find the right place in the
21 video, pause the video. We will be able to just ask the
22 witness, instead of showing them the whole video again, to
23 get them oriented, Did you see this at this point in time as
24 a place of reference? And so these are simply reference
25 points. They are admissible because they are from exhibits

1 that are agreed upon to be admitted in this case. And so
2 they are actually helpful to the jury and they are helpful
3 to presentation of an efficient case, which I know the court
4 has really pushed us to do and we really tried to do that.

5 MR. GRAY: Your Honor, may I respond?

6 THE COURT: Sure.

7 MR. GRAY: They are pictures of the video. If
8 they go -- I ask that they not go to the jury and just have
9 videos go to the jury, if they're just using them for
10 pictures of the video, so the jury doesn't get back there
11 and start looking at these pictures and not devoting their
12 time to the video, which is the main evidence. It's not the
13 pictures. A picture can take -- an isolated picture can be
14 very unfair to the whole picture. Thank you.

15 MS. BELL: Your Honor, I have no issue with the
16 court -- no one from the government is going to represent
17 that a single picture represents the whole video. If that
18 ever became an issue, the court can certainly caution the
19 jury.

20 THE COURT: How about the suggestion that Mr. Gray
21 just made, that the stills be used as demonstrative
22 exhibits, but not go to the jury room?

23 MS. BELL: So the reason that it is important that
24 they go to the jury room is because so that they have the
25 time stamps on them. It is helpful to the jury to

1 understand what happened and it has a time stamp on the top
2 of it. And so they will be able to go, oh, we should move
3 the video to this section because this is around the time
4 when Officer Kueng did the pulse checks or this is around
5 the time when they pulled Mr. Floyd out of his car. And so
6 they're going to be able to use those stills to find the
7 right places in the video. We are trying to be efficient
8 and helpful to the jury, which, of course, is the standard
9 for admissibility of evidence. And so that way the jury can
10 find the right places in the video. The witnesses will have
11 talked about those stills and those times, and so their
12 testimony will be connected to those times in particular,
13 and so it would be helpful to the jury.

14 THE COURT: Okay.

15 MR. GRAY: Well, Your Honor, the video has time
16 stamps on it. They can simply go through the video instead
17 of having these pointed out in the jury room. If they want
18 to present evidence of the photos, that's one thing; but
19 they have them go back to the jury, that's just totally
20 unfair to the defendants.

21 THE COURT: Counsel, my bigger concern, quite
22 candidly, is that these are cumulative and duplicative and
23 can end up -- they can end up being confusing to the jury,
24 but they are so many of them. We can spend forever trying,
25 trying the case going item by item through these, through

1 these still pictures, and I don't feel that that's
2 necessary.

3 I'm going to at this time permit the government to
4 use the still pictures as they choose, hopefully reducing
5 the number of the use of them to that that is significant.
6 At this time I'm not going to permit the still pictures to
7 go to the jury, but only to say that they are illustrative,
8 but I do reserve the right to change that ruling if I find
9 that it would be prejudicial not to let them go.

10 Okay. With that --

11 MR. PLUNKETT: I'm going to remain seated, if
12 that's okay.

13 THE COURT: Sure.

14 MR. PLUNKETT: Thank you.

15 THE COURT: Go ahead and get the jury.

16 MR. PLUNKETT: Your Honor, very quickly. I would
17 ask that -- it's a common practice, but I'd ask that the
18 court put it into an order that only a lawyer who is
19 handling a witness or handling an exhibit or handling a
20 side -- or examination be allowed to object, and certainly
21 for having a sidebar only the lawyer that's handling the
22 witness should be allowed to participate in the sidebar.
23 I've always done that in every trial, but here in the middle
24 of my opening the lawyer not handling the opening objected.
25 So I think it's important now to put it into an order.

1 THE COURT: Okay. Well, the court does so order.
2 Whoever is handling the witness is the person that will
3 inquire and will carry the objections, et cetera, with
4 respect to that witness.

5 MS. BELL: Your Honor, I did have one other issue.
6 As the court knows, the government did make a motion in
7 limine regarding jury nullification. And I only raise this
8 issue because I know that defense objected to the
9 government's opening as argument. And while I don't agree
10 with that characterization, to the extent that it was
11 argument, the defense, from the government's perspective,
12 certainly went well past that line. And I raised the jury
13 nullification issue in particular because Mr. Plunkett said
14 at the end of his opening, "But we can sit here and talk
15 about what the law is, but in the final analysis all cases
16 and everything we do is about people."

17 THE COURT: Okay. Your statement is correct
18 except for one thing. The jury nullification has been
19 raised. The court has ruled on that in limine, and the
20 court's ruling stands. That's where that issue is. Okay.

21 (Off record discussion.)

22 THE COURT: We've got a computer issue here. I
23 will step out for a minute while the reporter restarts her
24 computer.

25 (Pause)

1 **IN OPEN COURT**

2 **(JURY PRESENT)**

3 THE COURT: You may be seated.

4 Mr. Gray, I'll recognize you for opening.

5 MR. GRAY: Thank you, Your Honor.

6 Your Honor, counsel, Mr. Lane, ladies and
7 gentlemen of the jury.

8 One of the disadvantages of a joint trial is when
9 you are the last lawyer to give an opening statement, a lot
10 of what has already been said I was going to say in my
11 statement. I do have some statements to make, some -- call
12 your attention to the evidence that's going to come in, but
13 I don't think I'll be quite as long as the other lawyers.

14 My client, Thomas Lane -- stand up, Tom. Take
15 your mask off.

16 As you can see, he's a rather tall individual.

17 You can sit down.

18 And it would be good for you to take a look at
19 him, because what we'll go through in this trial, you will
20 learn a lot about him and you will learn a lot about his
21 conduct. And when you decide this case, you have to keep in
22 mind the individual and the evidence.

23 So in this case -- it's rather a remarkable case,
24 I believe, because the indictment charges Mr. Lane with
25 deliberate indifference. So he's only charged in one count

1 and that's called deliberate -- willfully, deliberately
2 indifferent to George Floyd's medical needs.

3 The willfully part you've already heard from
4 Mr. Plunkett. The deliberately indifferent part is where
5 you know -- I'm talking about know -- you know somebody's in
6 trouble, medically or physically or mentally, you know that
7 and you don't do anything, you're indifferent about it.
8 It's not that difficult.

9 And the responsibility of a law enforcement
10 officer, as has been stated by the government, is that once
11 a law enforcement officer takes custody or arrests or
12 detains an individual, an arrestee, he has a responsibility
13 to take care of that man and make sure he's okay up and
14 until he releases him to wherever he goes. And we don't shy
15 away from that. We agree with that, that Mr. Lane did have
16 the responsibility. And our evidence will show that he, in
17 fact, did.

18 And all of the government evidence that you are
19 going to see in this case, see and hear, their videotapes,
20 all will point to one factor, that Mr. Lane from the
21 beginning of the time that he came into contact with George
22 Floyd until the time when he walked out of that ambulance,
23 he was totally concerned and did everything he could
24 possibly do to help George Floyd.

25 So the evidence in this case will show that -- get

1 my notes here -- that -- and, by the way, as far as the
2 instructions, I am not going to talk about instructions and
3 the law. Judge Magnuson is the judge of the law. You are
4 the judge of the facts. And you are to decide what facts
5 are proven and do the facts fit the law that Judge Magnuson
6 is going to give you.

7 So let's first find out who Thomas Lane is. Get
8 my papers mixed up here. Thomas Lane is 38 years old.
9 Thomas Lane is married, and his wife is in the courtroom and
10 she's expecting her first child.

11 MS. TREPEL: Objection, Your Honor.

12 MR. GRAY: Excuse me?

13 MS. TREPEL: I said, "Objection, Your Honor."

14 THE COURT: Overruled.

15 MR. GRAY: He's married. His wife's name is
16 Courtney, and she's in the courtroom. They're expecting
17 their first child.

18 Thomas Lane grew up in Arden Hills. He went to
19 Mounds View High School. After high school he worked
20 digging holes all through Wisconsin and part of Minnesota
21 for cable, first with the shovel and then the backhoe. He
22 did this work for three years, manual labor.

23 After three years, he decided maybe he should get
24 an education. He has a brother that's a biology teacher in
25 high school, and he has a younger sister that's an artist.

1 So starting school -- he went to Century College,
2 a junior college, I believe it is, and he got an associate's
3 degree in sociology and law enforcement. He then went to
4 the University of Minnesota to get his graduate degree, his
5 degree in sociology again and law enforcement.

6 During the time he went to college, he worked
7 nights in security in downtown Minneapolis at various bars,
8 where he was a bartender, a server, and also the guy at the
9 door checking IDs. He did all that work throughout his
10 college days without any conflict.

11 He's, you will see evidence -- and you will never
12 see any evidence of him ever bullying anybody or physically
13 even harming anybody. That's not Thomas Lane. Thomas Lane
14 is what you'd call a gentle giant, a big guy, but he's not
15 mean or anything of that nature.

16 Now, after college, after he graduated, he went
17 and he got a job at a place called Totem Town. Totem Town I
18 vividly remember because it's been in Ramsey County for as
19 long as I can remember, since I was a kid, and it was a
20 juvenile center for delinquent kids.

21 After about six months there as a probation
22 officer, he -- Totem Town finally closed, after 50 or
23 60 years in business. So he obtained a job as a -- at the
24 juvenile center in Minneapolis, Hennepin County Juvenile
25 Center, as a corrections officer.

1 I apologize. I have to have some water.

2 He worked as a corrections officer for a year and
3 a half. And they, the state -- or the government, excuse
4 me, the United States of America, has all of his records
5 from there and they have all of his records from Totem Town,
6 and what you don't find in those records is that he ever had
7 any problem with anybody being mean, physically abusive, or
8 anything of that nature with juvenile delinquents.

9 So he did that job as a correction officer for
10 about a year and a half. He always wanted to be a
11 Minneapolis Police Department law enforcement officer. He
12 always wanted to do that because his grandfather was a
13 homicide detective in the Minneapolis Police Department.
14 His great-grandfather was the chief of police in Minneapolis
15 Police Department. And his great-great-grandfather was also
16 a patrolman in the Minneapolis Police Department. He really
17 cared for his grandfather and he wanted --

18 MS. TREPEL: Objection, Your Honor.

19 THE COURT: Yeah, I think, counsel, personal
20 family may be stretching.

21 MR. GRAY: So he wanted to become a police officer
22 in Minneapolis. He applied, and in February 2019 he got
23 notice that, yes, we'll accept you as a police officer.

24 So the first thing they do, they have to take a
25 physical test, a psychological -- a psychology test to see

1 if they are all right, and check their criminal histories,
2 of course. And he passes all of that.

3 And then they go through a four-and-a-half-week
4 theory training, where it's back at Century College that he
5 graduated from. So they went to the -- he went to Century
6 College for five and a half weeks.

7 And then after that training, I believe it's into
8 April or May, starting late February, March -- in any event,
9 he then went to the Hennepin County Technical College to
10 learn the technical aspects of law enforcement, handcuffs,
11 what does a gun look like and things of that nature.

12 In August he passed the -- he finished the
13 Hennepin County technical school and then he took the POST
14 test. The POST test is a test that you take to become a
15 state employed licensed police officer. He passed that too.

16 Then comes the time in Minneapolis, now that you
17 are there, you go to what's called the school where you
18 learn, the academy, it's called. And this is a school where
19 you learn about the Minneapolis Police Department and the
20 Minneapolis police officers. It's like a military academy.
21 They wear uniforms. It's yes, sir; no, sir. And when an
22 officer walks by you, you stand at attention. You do what
23 you are told. And you learn that and it's drilled into your
24 brain until about December of 2019. Yes. And in December
25 of 2019 he graduated from that area of training to become a

1 Minneapolis police officer.

2 Now -- and you might hear somebody say, well, on
3 December 10th of 2019 he became a police officer. Well, he
4 did and he didn't, because after December 10th of 2019, you
5 now -- well, first you have to take a month and you go
6 around the police department learning about the different
7 departments.

8 After that, you are now assigned what's called a
9 field training officer. And you've heard from the other
10 lawyers about these guys, but these are the select group --
11 at least these rookies, these recruits learn that, they are
12 the select group of Minneapolis police officers that are
13 going to train you. They are going to sit with you in the
14 car and you are going to be driving it or maybe sitting next
15 to them, and you're going to do police work and they're
16 going to critique you. They're going to grade you. They're
17 going to tell you what to do. They're your boss, basically.
18 They're your educator.

19 And for the next five months, that's what Tom Lane
20 did. He had three field training officers. First one was
21 downtown and was in Minneapolis. He was downtown, that
22 precinct. The next two field training officers -- he had
23 three of them -- the next two were in the Third Precinct,
24 where Derek Chauvin was located and he met Derek Chauvin
25 there.

1 And you will hear from him that he asked Derek
2 Chauvin questions when he had a question, and Derek Chauvin
3 replied. And he heard from the Third Precinct Derek Chauvin
4 was an excellent field training officer; follow what he
5 does.

6 So on May 20th of 2020, no more field training
7 officers. He's now on his own. He's on his own as a police
8 officer. He's now made it as a Minneapolis police officer
9 patrolman.

10 May 25th, five days later, I believe it was
11 Memorial Day, and the upper echelon, the chiefs, the
12 captains, the lieutenants, the sergeants, whoever did it,
13 put Thomas Lane with one of his classmates, Mr. Kueng, on
14 Memorial Day night. They were teamed together, two rookies.
15 If you add all of their experience without a field training
16 officer, you'd come up with seven days, seven days -- seven
17 workdays.

18 So what happens? They are out and about as
19 patrolmen and they get a call, and they get a call that Cup
20 Foods -- I know you've heard this, but the one thing you
21 have to understand, and the judge will tell you this, each
22 and every one of these defendants has a constitutional right
23 to have their case decided by the evidence against them, not
24 the evidence against the other two, not the evidence against
25 another one. They have a right -- and the judge will tell

1 you -- they have a right to have the evidence presented
2 against them to only be considered, not the evidence against
3 the others. So I have to go into this and discuss with you
4 what happened that night.

5 Thomas Lane and Mr. Kueng get the call, forgery or
6 counterfeiting at Cup Foods and the man appears to be
7 intoxicated. So they go and they drive to Cup Foods. You
8 see it on the maps. You will see it all through this trial.
9 They pulled up to Cup Foods -- and I've got to get another
10 drink of water.

11 They pulled up to Cup Foods. As has already been
12 told you, according to law enforcement, police officers,
13 this area of 38th and Chicago is known as the Blood area.
14 The Blood wear red clothes and apparently it is some kind of
15 a gang. You will see, interestingly enough, that the
16 passenger in George Floyd's car was wearing quite a red
17 outfit.

18 You also will hear from these law enforcement
19 officers that testify that this area, 38th and Chicago, is
20 known as a high-crime area. So -- and in Cup Foods one of
21 the managers has a Glock in the back of his back -- has a
22 gun. I believe you will see a picture of it. So it's not
23 like stopping down to someplace that didn't have a little
24 bit of danger.

25 So Tom and -- Mr. Kueng and Tom Lane go into Cup

1 Foods. They are told by the employees that that guy over
2 there in the blue Mercedes passed a counterfeit bill. He
3 appears to be intoxicated. And we went out there twice to
4 try to talk to him to just get our money back and he ignored
5 us. We went out there the first time and then we went out
6 there again, and he wouldn't give us the money back. But
7 he's still there. So the employee said, Go get him. Can
8 you go get him?

9 And they did. Officer Klein at the time and
10 Officer -- Officer Kueng, excuse me, and Tom Lane, Officer
11 Lane, walked across the street. And they both had, thank
12 goodness from our standpoint, they both had their body
13 cameras on. And walking across the street, Tom Lane
14 mentioned they are moving around in that car, which puts law
15 enforcement officers on alert; what's going on in that car.

16 So they get there and Tom Lane could not -- you
17 will hear from him -- he could not see in through the
18 window, so he hit the window with the flashlight. The
19 window came down. There was a conversation. You will hear
20 it and see it on the body-worn camera.

21 And, basically, George Floyd acted erratic. Let's
22 picture it that way. He wouldn't do what he was told. He
23 had his arm digging down in the side, his right hand, which
24 they learned in the law enforcement business that that could
25 either be getting a gun or hiding contraband. It's a

1 danger.

2 When you stop a car like this or when you approach
3 a car like this, as a law enforcement officer, it's as scary
4 for that law enforcement officer as it is for anybody,
5 because he does not know who he's approaching.

6 So Lane says, "Show me your hands," and he ignored
7 it. He was talking about getting shot by a cop, George
8 Floyd was; making no sense. And, finally, Tom Lane did what
9 he was taught to do and what he had seen his field
10 protection -- field training officers do, he pulled out his
11 gun and said, "Show me your f'ing hands."

12 Finally, when he did that, George Floyd put his
13 hands on the wheel, but he still would not comply, he was
14 still not being compliant. He tried to get out of the car.
15 Tom put -- Mr. Lane put him back in the car. They then --
16 he pulled him out of the car.

17 And, by the way, the one thing that has not been
18 mentioned yet, George Floyd was 6'4", 225 pounds. You will
19 see pictures of him. He was all muscle. And when you have
20 a person that's under the influence or on drugs, they are
21 very -- as common sense will tell you, sometimes quite hard
22 to control.

23 And, finally, Tom Lane pulled George Floyd out of
24 the car and they wrestled with him. Kueng came over --
25 Kueng was on the other side of the car to watch the

1 passengers -- came over and they both handcuffed him. They
2 wrestled with him to handcuff. They have him sit down
3 because they have -- there's two police officers and there's
4 two other people. There's three in this group.

5 So Tom goes over to talk to the lady, I believe
6 her name was Shawanda. And he asked, "What's with the --
7 Mr. Floyd, what's with George Floyd? Is he on -- is he
8 drunk?" That's what he asked. And she says, "No. He just
9 doesn't like police officers. He was shot by one." Well,
10 that's not true. He wasn't shot by any police officer ever.
11 But that's what she said, and she denied that he was drunk.

12 So that's the first time that Tom Lane asked
13 anybody or asked George Floyd anything about George Floyd's
14 physical or mental condition. She said no.

15 Now we go over to where he's got George Floyd, he
16 and Kueng, and they're going to walk him over to the squad
17 car and detain him. That's what police procedure is.
18 You've got an investigation here. You've got counterfeit
19 bills. You've got suspicious conduct by all three of these
20 individuals. You want to detain Mr. Floyd, hold him in your
21 backseat, search his car, talk to the people, and do what's
22 called an investigation. That's their job.

23 So they're walking him over to the car, and twice
24 you will see on the video he falls down sort of and they
25 help him out. They don't shove him down. They don't do

1 anything like that.

2 And, in addition, Tom Lane on the way over there
3 asks him, "Are you on something?" Referring to drugs. And
4 he says, "No, I'm not on anything." He denied being on
5 drugs.

6 You will learn -- toxicology -- he was taking
7 fentanyl and methamphetamine. You will find out also that
8 in the backseat of the squad car -- and these squad cars are
9 cleaned every day. In the backseat, after the wrestling
10 match, there was fentanyl and methamphetamine. Where did
11 that come from?

12 So he says, no, I'm not on any drug. If he had
13 said yes, the policy in Minneapolis Police Department would
14 be to take him to a hospital, take him to Hennepin County
15 Medical Center. But he denied. He was indifferent about
16 his own condition. He denied being on drugs.

17 So they get him to the squad car, these two guys
18 with five, six days of being on their own, and he says he's
19 claustrophobic. He wasn't claustrophobic when he was in his
20 own car, but now he's claustrophobic.

21 And what do these two officers do? First they
22 searched him because that's part of the deal, you've got to
23 search the man. And, remember, he's still handcuffed. And
24 then they say, no, you have to go in the squad car. And he
25 says, "No, I'm claustrophobic. Tom Lane says, "I'll roll

1 the window down, I'll crack the window if you'll just go in
2 there." "No, I won't." George Floyd says again, "I'm
3 claustrophobic." "Roll the windows down." Five times, five
4 Times Thomas Lane told George Floyd that I'll roll the
5 window down if you'd just get in the car.

6 Another time George Floyd said to Thomas Lane --
7 and you will see this in the body cameras -- "Stay" with me,
8 stay with me," he said to Thomas Lane. Well, unknown to
9 Mr. Lane and Mr. Kueng drugs were coming out of his mouth.
10 And he said, "I'll stay with you, I'll stay with you."

11 Now, you'll see, as the other lawyers had said,
12 there was quite a tussle. When you have a man with the
13 strength that Mr. Floyd had, and you will see he was quite
14 muscular, and they are trying to put him in the backseat of
15 a squad car, even though handcuffed, kicking and fighting,
16 you could actually see the squad car in the video go back
17 and forth. It was a good wrestling match.

18 So what happens? Because Chauvin, Derek Chauvin,
19 and his partner, Mr. Thao, were in the neighborhood and they
20 heard about the call, they decided to go over there. Before
21 them, the Park cop that you've heard about came there and
22 they asked him to watch the two other individuals until we
23 get George Floyd detained in the car.

24 George Floyd says, "I want to go out on the
25 ground." You will hear him. I think he said it two or

1 three times. And Thomas Lane is over on the passenger side
2 back door. And they're now going to take him out and put
3 him on the ground next to that area.

4 And what happens? All of a sudden he sees Derek
5 Chauvin, and you will see this on the video. He goes in
6 front of Thomas Lane and grabs ahold of George Floyd
7 himself. And now he's got George Floyd. Thomas Lane backs
8 off.

9 And what he's learned, when field training
10 officers take over like that, you must have done something
11 wrong. And you know what? These two rookies simply could
12 not get this fellow in the backseat and they were doing
13 something wrong.

14 So what does Chauvin do? He takes over, and he
15 takes over and he grabs the guy and he puts him on the
16 ground. Thomas Lane backs off. Kueng is there. Kueng
17 comes from around the other side.

18 And now they're on the ground. Thomas is down by
19 his legs. You will see in the photos that George Floyd's
20 head is -- you cannot see that knee on George Floyd's neck
21 from where Thomas Lane was at. It was on the corner of the
22 back of the car.

23 In any event, though, as soon as he went down on
24 the ground, because George Floyd had a cut on his lip,
25 Thomas Lane, pursuant to the procedure that they're supposed

1 to do, he calls for the ambulance, for ER, "Cut lip, 2,"
2 which means you don't have to sirens and lights, but get
3 here, we have a cut lip on this man.

4 Shortly after that, it was up to a 3 because of
5 his condition with respect to excited delirium. Excited
6 delirium is a physical and mental condition that police
7 officers learn in their school, that a person on drugs
8 fights and fights and then he rests and he acts like he's
9 unconscious or is unconscious and when he wakes up, which he
10 does, he has super-human strength. And they're taught that
11 at the academy. So they up the ambulance to a 3, lights and
12 siren. It still took nine minutes to get there.

13 Next thing -- what did Tom Lane also doing during
14 this time? He's the one that said, "Should we hobble him?
15 My hobble is in the back of my -- our squad." The hobble
16 comes out. But all of a sudden Chauvin says, "No, he's good
17 where he's at. We don't need the hobble."

18 If they had hobbled him, he would be on his side
19 and no doubt be alive today. That was what Thomas Lane
20 learned in his academy. And the FTO, he also learned that
21 they are the ones that know. He says no, so Thomas Lane
22 said, okay, no hobble.

23 So we have Lane suggesting the ambulance -- or
24 calling the ambulance, telling Thao, I believe it was, to up
25 it to a 3.

1 And then, most importantly, ladies and gentlemen,
2 Thomas Lane said to Chauvin, "Shall we roll him over?"
3 That's what they're taught at the academy, you have to roll
4 somebody over on his side because of what is called
5 positional asphyxia. And Tom said that. "Shall we roll him
6 over?" And Chauvin says, "No, he's good where he's at."
7 And Tom says, "Well, I'm concerned about excited delirium."
8 Chauvin says he's staying where he's at.

9 Tom Lane later, where he was down by his feet --
10 and, by the way, after three or four minutes you will notice
11 Tom Lane just has his hands on his feet. He's not putting
12 pressure on him or anything. Watch for that in the video.

13 But Tom Lane says he looks and he -- by the way,
14 two or three days after this incident, he gave a lengthy
15 statement to the Bureau of Criminal Apprehension. In that
16 statement he said --

17 MS. TREPEL: Objection, Your Honor, hearsay.

18 MR. GRAY: Well, Your Honor, it's not hearsay. My
19 client will be testifying.

20 THE COURT: I think we have to wait for the client
21 to testify, then.

22 MR. GRAY: Okay.

23 THE COURT: It's hearsay now.

24 MR. GRAY: It would be a statement of a client.

25 THE COURT: Proceed.

1 MR. GRAY: All right. In any event, when you --
2 the breathing was checked. All right? And Thomas Lane said
3 at the scene he's breathing. So he's concerned more about
4 George Floyd. He's breathing.

5 Then after that, Thomas Lane tells Kueng to check
6 his pulse. And obviously you can't check the carotid pulse
7 because Derek Chauvin still has his knee on his neck under
8 the back of that SUV, that squad car. So his carotid pulse
9 you couldn't check. And what does Kueng -- he checks his
10 wrist, radial I believe, and he says, "I can't find one."
11 And then Tom Lane, he reaches down and he tries to find a
12 pulse on Mr. Floyd's ankle.

13 At about that time, all of a sudden you hear the
14 sirens and the lights and the ambulance is arriving. And
15 you will hear Tom in the video saying, "Here we go," which
16 is the ambulance is arriving.

17 Now, once the ambulance arrives, it pulls up and
18 an emergency room person, an ER guy, comes out of the
19 ambulance, along with the other ER person, and there's only
20 two.

21 And by this time you will hear that there's a
22 crowd that's quite loud. It was loud enough where Derek
23 Smith, the person that's checking out George Floyd, didn't
24 want to stay there. He wanted to take George Floyd and go
25 down a block or two.

1 So what does Derek Smith do? He goes and checks
2 the carotid artery on George Floyd. He says nothing to any
3 of the law enforcement officers. The only thing he actually
4 said to the law enforcement officers is when he came down
5 from the ambulance, he said, "Get out of my way." And
6 that's because once the ER people are there, they take over.
7 The police department backs off. And he says, "Get out of
8 my way.

9 So he checks the carotid artery and says nothing
10 to Thomas Lane, no police officer. And then he just -- he
11 walks back to the ambulance and goes in the ambulance to get
12 the gurney, the stretcher; still hasn't said anything. And
13 he comes out with the gurney, and Tom Lane even before that
14 has picked up George Floyd to put on the stretcher.

15 And finally the gurney comes out and Thomas Lane
16 helps with the ER guy, Derek Smith, and Chauvin, who is
17 still on his neck. He just got off his neck at that time.
18 And they put him on the gurney. And he was on a gurney on
19 his back, so that was the first time that his face could be
20 seen, George Floyd.

21 Tom Lane went up to Derek Smith, extremely
22 concerned about George Floyd, and said, "Can I go with you?
23 Can I help you?" Sir -- to Derek Chauvin, "Sir, can I go
24 with him?" "Go ahead."

25 And Thomas Lane gets into the ambulance and he and

1 Derek Smith, because of the crowd, whether it was unruly or
2 aggressive or whatever, Derek Smith will testify and will
3 tell you that because of this crowd, they wanted to move a
4 couple blocks down before they do cardiopulmonary
5 resuscitation. Chest compressions is an easier word to say.

6 So when Thomas Lane got into the back of the
7 ambulance, he and Derek Smith with the other ER person got
8 in the ambulance and they drove off. And when they're
9 driving off, you will see on the video Thomas Lane doing
10 chest compressions trying to revive George Floyd, not
11 deliberately indifferent about his health at all.

12 At the same time Derek Smith is taking out a
13 LUCAS. A LUCAS is a machine you put on the chest of the
14 person, and it's an automatic chest compressor. Derek Smith
15 was having trouble with it. Thomas Lane was helping him,
16 picking up the body at the same time Derek Smith was taking
17 George Floyd's clothes off.

18 Finally, after two blocks the driver, Bravinder I
19 believe his name was, he parks the ambulance and he comes
20 back into the back of the ambulance where the two men are,
21 Thomas Lane and Derek Smith. And now there's three of them,
22 and they're two blocks down and -- or maybe three. And
23 Thomas Lane still has his body camera on. Thomas Lane says,
24 "Well, do you need me anymore? Shall I ride with you to the
25 hospital?" They say, "No, we don't need you any more."

1 He got out of the ambulance. He hitched a ride
2 with a fire truck going to the area of 38th and Chicago and
3 got a ride there and stood there and was still not -- didn't
4 know if George Floyd was alive or dead. He was hoping he
5 was alive, but in his own mind it didn't look real good.

6 And there they were questioned by the upper brass.
7 A lieutenant questioned him. I think a sergeant questioned
8 him. And, of course, the next day he was terminated. It
9 was his fault. Terminated from his job. Kueng was
10 terminated also. They were probationary law enforcement
11 officers. The first year as a cop, they can just -- you're
12 fired.

13 So that's Thomas Lane's story. I'll be back at
14 the end of this case and discuss with you the law, the
15 presumption of innocence, proof beyond a reasonable doubt,
16 and the elements of the crime of deliberate indifference.

17 If there ever were a case that the government has
18 failed miserably to prove that my client was deliberately
19 indifferent, it's this case. This is a perversion of
20 justice, ladies and gentlemen.

21 Thank you.

22 THE COURT: Thank you, Mr. Gray.

23 MR. GRAY: Thank you, Your Honor.

24 THE COURT: Members of the jury, we're going to
25 take a brief afternoon recess at this time.

1 Again, I would caution you not to discuss the case
2 during the course of the recess.

3 I'm also going to suggest that during the
4 recess -- as you go to the jury room, in the equipment box
5 that you have there are some notepads. And when you do come
6 back in, if you would bring those notepads with a pencil or
7 pen with you, I'd appreciate it. I will give you some more
8 instructions about notes at that time.

9 With that, the jury may be excused.

10 (Jury excused)

11 **IN OPEN COURT**

12 **(JURY NOT PRESENT)**

13 THE COURT: Counsel, who is the first witness you
14 will be calling?

15 MS. BELL: Your Honor, it will be Kim Meline from
16 FBI.

17 THE COURT: Okay. Very well. Thank you.

18 We'll see you in just a few minutes.

19 (Recess taken at 2:44 p.m.)

20 * * * * *

21 (2:57 p.m.)

22 **IN OPEN COURT**

23 **(JURY PRESENT)**

24 THE COURT: Ladies and gentlemen of the jury, I'd
25 asked that you bring your notebooks with you when you come

1 back, come back now, and I see that you've done that and I
2 thank you.

3 I'm going to now ask that you open the notebook
4 and on the very first page write your name and then
5 immediately flip it over to the next page.

6 Now, let me talk a little bit about notes. Notes
7 are for your -- notebooks are for your convenience. Some
8 people take copious notes and that's fine, you can do that.
9 Some people take very few or no notes. Fine, you can do
10 that. You don't take notes because your neighbor is or you
11 don't not take notes because your neighbor is not taking.
12 It's whatever you personally prefer, and you're completely
13 free to do that.

14 You should also know that at the conclusion of the
15 case you will have your notebooks with you in deliberations
16 to make reference back to the testimony, and you are
17 perfectly welcome to do that.

18 But I do caution you about something, and that is
19 as you are in deliberations, remember it's the issues of the
20 case, the guilt or non-guilt of the defendants, not whose
21 notes are right. So don't get waylaid on that type of
22 discussion.

23 Finally, with the notebooks, at the conclusion of
24 it all, after you've rendered your verdict, et cetera, the
25 notebooks, the notes will be destroyed and they will not be

1 seen by anybody after the conclusion of the case.

2 Okay. With all of those instructions you know
3 about notes and, Mr. Slaughter, you were standing up here
4 and then I talked for a long time, so --

5 MR. SLAUGHTER: No worries, Your Honor.

6 THE COURT: -- you sat down.

7 Would you call your witness, please.

8 MR. SLAUGHTER: Thank you, Your Honor. The
9 government would Kimberly Meline to the stand, please.

10 THE COURT: Okay. Ms. Meline, if you would come
11 forward, please.

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: And stop somewhere.

14 KIMBERLY MELINE,

15 called on behalf of the government, was duly
16 sworn, was examined and testified as follows:

17 THE COURT: If you'd take the witness stand,
18 please. And I will ask that, once you are there, please
19 remove your mask and then speak into the microphone or slide
20 right up to the microphone.

21 THE WITNESS: Yes, sir.

22 THE COURT: And, with that, if you would give us
23 your name and spell your last name, please.

24 THE WITNESS: My name is Kimberly M. Meline, and
25 the last name is spelled M-E-L-I-N-E.

1 THE COURT: Okay. Proceed.

2 MR. SLAUGHTER: I have one administrative matter,
3 Your Honor, regarding the stipulations the parties have
4 entered into regarding certain evidence, just a housekeeping
5 matter before the jury, Your Honor.

6 THE COURT: I forgot.

7 MR. SLAUGHTER: It's on me, Your Honor. I should
8 have brought it up beforehand.

9 THE COURT: Members of the jury, the parties in
10 the case, to their credit, have entered into a stipulation
11 to receive a large number of exhibits in evidence. You
12 don't need to write these down, but I do need to read the
13 record -- these exhibits into the record.

14 The following record -- exhibits have been
15 received: Exhibit Number 1, 2, 3, 4, 5, 5A, 7, 7A, 9, 9A,
16 11, 14, 16, 17, 18, 19, and 21. Did I say twenty -- I'm
17 sorry. 21 is not admitted. Strike 21. And then
18 Exhibits 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 56,
19 57, 58, 59, 60, 61, 62, 64, 65, 66, 67, 68, 69, 70, 71, 72,
20 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87,
21 98, 99, 100, 101, 102, 103, 104, 106, 107, 108, 109, 110,
22 and 128.

23 Then, members of the jury, you should know that
24 certain exhibits that have just been received are exhibits
25 that apply to only one of the three defendants. Maybe a

1 personnel record as an example, that type of thing, that
2 exhibit will not be applicable to the other two defendants.

3 Now, there are quite a series of these exhibits
4 that have just been received where Mr. Thao, they're not
5 applicable to him. And we will remind you, as best we can
6 recall, whenever any of those exhibits would come up so that
7 they would be applicable maybe to another defendant, but not
8 to Mr. Thao.

9 So, with that background, I think we can receive
10 those exhibits and you can proceed, Mr. Slaughter, and thank
11 you for drawing it to my attention.

12 MR. SLAUGHTER: Thank you, Your Honor. If I
13 may -- and I think I might have missed it. Your Honor, our
14 stipulation includes --

15 THE COURT: Oh, just a minute. I do have more to
16 say.

17 Exhibits numbered 5A, 7A, and 9A are transcripts
18 of videos and what's being said on those videos. Those
19 transcripts are someone's idea of what is being said, and
20 they will be provided to you and are provided to you as an
21 aid in your consideration of the particular exhibit.

22 The one thing I caution you about, though, is that
23 if there's any discrepancy with what you see on the
24 transcript and what you see and hear from the video itself,
25 you are bound by the video and not by the transcript,

1 because the transcript is somebody else's idea of what they
2 think was said.

3 Okay. Now, if I missed another one, let me know.

4 MR. SLAUGHTER: I might not have heard Your Honor,
5 but Government Exhibit 12 at paragraph 12 and Government
6 Exhibit 39, which is at paragraph 19 of the stipulation --

7 THE COURT: I'm sorry. Exhibit 12?

8 MR. SLAUGHTER: Correct, Your Honor.

9 THE COURT: Okay. I did not have Exhibit 12. Is
10 there -- on the stipulation, but I may have just missed it.
11 Is there objection to Exhibit 12, Mr. Chang's body camera?
12 I'll then receive it, assuming it was in there and I just
13 missed it.

14 And then what other number?

15 MR. SLAUGHTER: Government Exhibit 39 at
16 paragraph 19, Your Honor. It's a dispatch summary timeline.

17 THE COURT: Yeah, 39 is received. I have that.

18 MR. SLAUGHTER: And I apologize if I missed it,
19 but 6 -- I'm sorry, Government Exhibit 63.

20 THE COURT: Again, I do not have 63. Let me look
21 at the record here. Maybe --

22 MR. SLAUGHTER: It's at paragraph 40 of the
23 stipulation. I have a copy of the stipulation as well, Your
24 Honor.

25 THE COURT: Okay. I think in my copying over, I

1 probably missed it. No, I do not -- I don't have it on my
2 copy because there's a three-hole punch right at that spot.
3 So 40 is included in --

4 MR. SLAUGHTER: It's 39, Your Honor.

5 THE COURT: I'm sorry.

6 MR. SLAUGHTER: 12, 39, and 63 are the three
7 different exhibits that I missed.

8 THE COURT: 63 is the one I was just talking
9 about, and that is received.

10 MR. SLAUGHTER: And my esteemed counsel just let
11 me know that I didn't hear 47 either, Government Exhibit 47.
12 That's similarly at the top of the page, paragraph 24 of the
13 stipulation. It might have gotten three-hole punched as
14 well.

15 THE COURT: That is entirely possible. Again,
16 which number are you missing?

17 MR. SLAUGHTER: Government Exhibit 47, Your Honor.
18 It's at paragraph 24 on page 4 of our stipulation.

19 THE COURT: Yeah, I think the precise same thing
20 has happened there. And so that also is received. Okay. I
21 think we have it.

22 Proceed.

23 MR. SLAUGHTER: My first thing would have been to
24 offer numbers of different exhibits, but His Honor already
25 took care of that.

DIRECT EXAMINATION

BY MR. SLAUGHTER:

Q. I think you stated your name. Is that correct?

A. Yes, that's correct.

Q. Where are you employed?

A. I'm employed by the Federal Bureau of Investigation,
commonly referred to as the FBI.

Q. What are your responsibilities there?

A. Within the FBI I work for a unit called the Multimedia
Exploitation Unit. I am the program manager for the Field
Audio Video Program. And I'm also a forensic examiner
specifically related to audio evidence, video evidence, and
image evidence.

Q. Let's break that up a little bit. So you said
"exploitation," so let's start with that. What does that
mean?

A. So, as I said, the unit that I work for is called the
Multimedia Exploitation Unit, and basically what we do as a
unit is make sure that the FBI is using all evidence that's
commonly referred to as multimedia, audio, video, and image,
to the best of our abilities in order to garner leads.

So we exploit that media or basically just use it
to the best of our abilities in order to understand it and
to determine what we can use to assist in our
investigations.

1 Q. So when you say "the Field AV Program," what does that
2 mean?

3 A. So the Field Audio Video Program is a program that is
4 run through the Multimedia Exploitation Unit, and
5 essentially what we are is a collection of forensic
6 examiners of that type of media, of audio, video, and
7 imagery. And the Field Audio Video Program provides
8 software, hardware, and training for examiners throughout
9 the country.

10 Q. What are your responsibilities in your present role?

11 A. As I said, I'm the program manager, so my job is to make
12 sure that personnel within the program are trained, that
13 they are trained to do their jobs well, that they know how
14 to process evidence related to investigations and also that
15 they have what they need in order to do it, including
16 hardware, software, and training.

17 Q. How many individuals do you supervise?

18 A. Directly I supervise five regional program managers
19 across the country, but in addition to that, we have
20 approximately 100 different individuals throughout the FBI
21 who perform these types of tasks, and those are essentially
22 assigned work through those regional program managers.

23 Q. When you say -- are those all people you supervise?

24 A. Indirectly, yes, in that I help assign them work related
25 to our investigations.

1 Q. And is that all tied -- are all those individuals
2 forensic media examiners?

3 A. Of some sort, yes. Some also have additional duties
4 related to things like computer forensics or photography,
5 but they all do audio and video examinations as well.

6 Q. Well, just taking a step back, how long have you been
7 with the FBI?

8 A. I've been employed with the FBI for about 11 -- or just
9 shy of 11 years now.

10 Q. Has it always been in this capacity?

11 A. It has not. I actually took this position with the
12 Multimedia Exploitation Unit about three years ago -- about
13 three and a half years ago, actually. Prior to that, I
14 transferred from a unit called the Forensic Audio, Video,
15 and Image Analysis Unit, where I was doing additional types
16 of work and I was stationed in Quantico, Virginia, as
17 opposed to now where I am working out of the Minneapolis
18 office.

19 Q. Well, what did you do before -- so those several years,
20 I should make that clear, is that also working with forensic
21 media --

22 A. Yes, it was.

23 Q. -- before this most recent role?

24 A. Yes, sir.

25 Q. What did you do before you got in the FBI?

1 A. Before I was hired by the FBI, I worked for the St.
2 Cloud Police Department up in St. Cloud and there I was the
3 crime lab director. However, because we were a very small
4 laboratory, I also was responsible for performing forensic
5 examinations. I have some training in chemistry and so I
6 was doing chemical analysis of controlled substances, crime
7 scene examinations, as well as video analysis.

8 Q. So some forensic video analysis back then too?

9 A. Yes.

10 Q. How long were you at St. Cloud?

11 A. For about two and a half years.

12 Q. What were you doing before that?

13 A. Just before I was hired by the St. Cloud Police
14 Department, I was working for the St. Paul Police
15 Department, which is just a few miles from here. I was
16 working in the laboratory there.

17 Q. What did you do for the St. Paul Police Department?

18 A. I was a forensic scientist or forensic examiner as well.
19 I was employed as both Criminalist I and eventually promoted
20 to the Criminalist II position. So my responsibilities were
21 to perform forensic examinations in controlled substance
22 analysis, crime scene examinations, forensic video analysis.
23 And as the Criminalist II, I also supervised the duties of
24 the Criminalist I position.

25 Q. How many years were you at the St. Paul Police

Department in that role?

A. In that role, I was in the -- assigned to the crime lab for about four to four and a half years.

Q. Combined, how many years experience do you have in forensic video?

A. I began training in forensic video analysis in about -- in 2004. So I'm in the neighborhood of 18 years of experience.

Q. You touched upon it a little bit. What's your formal education?

A. I have a bachelor's of science degree in institute of technology studies as well as psychology. The institute of technology studies, I focused in chemistry and chemical engineering. And I graduated from the University of Minnesota-Twin Cities.

Q. Any additional training specific to, if you will, forensic media analysis?

A. Absolutely. So in addition to the training that I received through my bachelor's degree, which didn't directly relate to computer forensics or video analysis, I also have attended ongoing training, extensive training, within the field of forensic video analysis and other areas of forensics. That training included things like vendor training, so learning how to use specific software packages. It included things like general forensic training, how to

1 display evidence to its best ability, and also a number of
2 different on-the-job assignments in order to further that
3 education.

4 Q. What, if any, certifications specific to forensic video
5 analysis have you gotten?

6 A. I've been certified by two different organizations as a
7 forensic video analyst. I've been certified by LEVA, which
8 is the Law Enforcement and Emergency Services Video
9 Association, specifically to be a forensic video examiner or
10 forensic video analyst.

11 I've also been certified by the IAI, which is the
12 International Association for Identification, and I have
13 been certified by the IAI as a forensic video examiner.

14 And in addition to that, following my
15 certification, I have also served in a number of roles with
16 the certification board of the IAI, including as the chair
17 of the certification board for the -- for that organization.

18 Q. Well, how did you get certified with LEVA, for example?

19 A. With LEVA, the certification was a number of years of
20 experience as a forensic video examiner. They also required
21 four separate one-week training sessions in various aspects
22 of forensic video analysis and the law.

23 In addition to that, in order to complete my
24 certification as an examiner, I was required to complete
25 casework and defend my work before a certification board in

1 person.

2 Q. Just so the jury understands, what are some of the
3 things a forensic video examiner with your experience can do
4 with video media?

5 A. There's a number of different things that we can do. It
6 ranges from the easy, things like just simple processing,
7 you know, trying to make things play at the same time side
8 by side, what we call synchronization; or it could be
9 something much more difficult, like trying to determine the
10 specific camera that captured a piece of video or whether an
11 individual depicted within video or image is a suspect or
12 something along that lines.

13 Probably one of the more technical things we do is
14 called photogrammetry, which is making measurements inside
15 video or image. So if, for instance, I was to try to
16 determine what the height of a bank robber was or how fast a
17 getaway vehicle was traveling within a series of video,
18 those would be examples of different things that I could do
19 as a forensic video examiner.

20 Q. And I want to make sure I am clear. You said that doing
21 the side-by-side thing is a relatively easy thing to do?

22 A. Under certain conditions, yes, absolutely. That's one
23 of the easier things that I would do as a forensic video
24 examiner.

25 Q. Have you provided any lectures or workshops for other

forensic media examiners?

A. I have. I have lectured in front of the International Association for Identification. I've also taught different courses in relationship to forensic video analysis, including teaching classes for the Field Audio Video Program.

Q. In fact, where were you the week before last?

A. Two weeks ago I was in Portland, Oregon. We are inducting a new training class into the Field Audio Video Program, and so I was teaching video analysis to that class in Portland two weeks ago.

Q. Where were you last week?

A. Last week I was in London within the United Kingdom, and at that time I was consulting with the London Metropolitan Police Service because they are interested in some of the tools that we use within the FBI. And so I was briefing the London Metropolitan Police Service's counterterrorism unit on different tools and how to use them.

Q. Have you ever been published?

A. I have.

Q. How many times?

A. I've been published twice. I completed a study on error rates specific to capturing the height of individuals in video in different methodologies. So that particular study was published through the *Journal of the International*

1 *Association for Identification.*

2 I also was published through the *Journal of the*
3 *American Academy of Forensic Sciences*, which published in
4 part my study on how to determine the -- or excuse me, not
5 how, but essentially a case study of whether laypeople or
6 examiners were better at determining the make and model of
7 vehicles depicted in imagery.

8 Q. Have you testified in court before?

9 A. Yes, I have.

10 Q. About how many times?

11 A. Somewhere in the neighborhood of 80 and 90 times over
12 the course of my career.

13 Q. So let's talk about this matter. You are not a case
14 agent, correct?

15 A. That's correct, I'm not.

16 Q. You understand you are first being brought here as sort
17 of a foundational witness to address certain exhibits that
18 have been admitted -- and I think you heard us talking about
19 them -- as well as some proposed exhibits as well;
20 understood?

21 A. Yes, sir.

22 Q. To be clear, just given your expertise, were you asked
23 to address some of those original exhibits, the media, and
24 create some combined exhibits?

25 A. Yes, I was.

1 Q. Side-by-side exhibits?

2 A. Yes. I was asked to play several of the videos that I
3 received side by side so that they played at the same time,
4 essentially that they were synchronized.

5 Q. So before we talk about that, I want to make sure that
6 we talk about just the underlying exhibits themselves. The
7 jury has heard about media, and I want to make sure that we
8 talk about just some of the original media, if you will.

9 Understood?

10 A. Yes, sir.

11 Q. All right. So -- and His Honor talked about them a
12 little bit, but I'm going to -- I think he just gave out the
13 numbers.

14 We have Government Exhibit 2, which is what we've
15 described as a Cup Foods interior video; is that correct?

16 A. That's correct.

17 Q. Government Exhibit 3, which is the Cup Foods exterior
18 video at 38th Street?

19 A. Yes, sir.

20 Q. Government Exhibit 4, the Cup Foods exterior video for
21 Chicago Avenue?

22 A. Yes, that's correct.

23 Q. A number of different body-worn cameras, Government
24 Exhibit 5, 7, 9, 11, and 12, correct?

25 A. Yes, that's my understanding.

1 Q. Well, you reviewed all those, correct?

2 A. I did, yes.

3 Q. You understand the exhibit numbers now?

4 A. Yes, sir.

5 Q. And we also have Government Exhibit 14, the Milestone
6 video?

7 A. Yes, that's correct.

8 Q. Government Exhibit 16, the Dragon Wok video?

9 A. Yes, sir.

10 Q. Government Exhibit 17, what we call the Frazier video?

11 A. Yes, sir.

12 Q. Government Exhibit 18, what we call the Oyler video?

13 A. Yes.

14 Q. And Government Exhibit 19, what we call the Hansen
15 video?

16 A. Yes, sir.

17 Q. And then, finally, Government Exhibit 20, what we call
18 the Funari video. Do those all sound familiar to you?

19 A. They do.

20 Q. And is it your understanding that this is the world of
21 at least working digital video associated with this, the
22 events of May 25, 2020?

23 A. Yes, that's correct.

24 Q. There was one additional form of media from a location,
25 correct?

1 A. There was. However, that video was not able to be
2 played. It was corrupted and it did not play correctly.

3 Q. Do you recall where that was from?

4 A. It was from the Speedway gas station just across the
5 street from the Cup Foods.

6 Q. And, as you've heard, the parties have already
7 stipulated to the admissibility. They're into evidence.
8 His Honor has already put them into evidence as far as
9 exhibits in this matter. Understood?

10 A. Yes, sir.

11 Q. Now, just so we are clear about where some of these
12 media sources are from --

13 MR. SLAUGHTER: I'd like, if we could, Your Honor,
14 to dim the lights a little bit and I'll pull up the map --
15 or a map.

16 BY MR. SLAUGHTER:

17 Q. Are you familiar with this exhibit, Government
18 Exhibit 1?

19 A. Yes, I am.

20 THE COURT: Counsel, could I interrupt and ask a
21 question? What do you mean when you use the word "media
22 source"?

23 MR. SLAUGHTER: I'm sorry, Your Honor. The
24 location where video was taped.

25 THE WITNESS: Yes, that's my understanding.

1 MR. SLAUGHTER: That's my -- I'm sorry, Your
2 Honor. I'll use a different phraseology. It's my problem.

3 THE COURT: Okay. Proceed.

4 BY MR. SLAUGHTER:

5 Q. Video. And I was counseled before to not say "media,"
6 but it's video, correct?

7 A. Yes, it is.

8 Q. I'm showing you what's been marked as Government
9 Exhibit 1. And fair to -- have you grown familiar at least
10 with this intersection over time --

11 A. I have.

12 Q. -- from your review of this different media we are
13 talking about?

14 A. Yes, that's correct.

15 Q. You are familiar at least with 38th Street, East 38 th
16 Street, and Chicago Avenue?

17 A. I am.

18 Q. I want to make sure we just go through the different
19 locations where different exhibits were found, if that's
20 okay?

21 A. Yes.

22 Q. And then I'll -- likely I'll play just a bit of these
23 underlying videos so that the jury becomes at least somewhat
24 familiar with them.

25 A. Okay.

1 Q. So on Government Exhibit 1, just going to Government
2 Exhibit 2, which is described as Cup Foods interior, if you
3 could, go ahead and point out where Cup Foods is just so
4 we're clear.

5 A. I'm not sure if this is a touch screen or --

6 Q. I believe it is a touch screen.

7 THE COURT: It should be.

8 THE WITNESS: Excellent.

9 So the Cup Foods is just here (indicating), as
10 indicated on -- within the map.

11 BY MR. SLAUGHTER:

12 Q. And we already talked about we have an interior camera
13 and then two different exterior cameras and different
14 exhibits that we've made for this?

15 A. Yes, that's correct.

16 Q. And to be clear, Government Exhibit 2 contains like the,
17 if you will, the product that we got from Cup Foods from the
18 interior and then a more readily playable form so the jury
19 can play it easier?

20 A. Yes, that's correct.

21 MR. SLAUGHTER: With the court's permission, I'm
22 going to play Government Exhibit 2 briefly.

23 THE COURT: Proceed.

24 MR. SLAUGHTER: I'm trying to get rid of --
25

1 BY MR. SLAUGHTER:

2 Q. So you're familiar with Government Exhibit 2?

3 A. Yes. This is an example of the video that was captured
4 inside the Cup Foods store.

5 Q. Government Exhibit 3 is identified as Cup Foods
6 exterior, 38th Street -- facing 38th Street; is that
7 correct?

8 A. Yes, that's correct.

9 Q. And I'm just going to pull up Cup Foods, expand this a
10 little bit. If you could, just indicate where that
11 generally is or where that is.

12 A. Generally speaking, the camera that captured that video
13 is this associated here (indicating).

14 MR. SLAUGHTER: No idea why it's highlighting.
15 With the court's permission, I'll play a short piece of
16 Government Exhibit 3, Your Honor.

17 THE COURT: Proceed.

18 (Video recording played)

19 BY MR. SLAUGHTER:

20 Q. This is just Government Exhibit 3 facing -- the Cup
21 Foods exterior facing 38th?

22 A. Yes, that's correct.

23 Q. And we have another one, another camera, and I'm not
24 going to ask you to indicate in case I have more issues with
25 this. This is another camera facing Chicago Avenue?

1 A. Yes, it's the camera right next to the one I just
2 pointed out a moment ago.

3 Q. And that faces what direction?

4 A. It faces north just in front of the Cup Foods store.

5 MR. SLAUGHTER: With the court's permission, may I
6 play Government Exhibit 4?

7 THE COURT: Proceed.

8 (Video recording played)

9 BY MR. SLAUGHTER:

10 Q. Is this Government Exhibit 4?

11 A. Yes, sir.

12 Q. Again, to be clear, for both Government Exhibit 3 and
13 for Government Exhibit 4, just like 2, kind of like the
14 original kind of stuff we got from the owner and then a more
15 readily playable version?

16 A. Yes, that is.

17 Q. And I'm not going to go in chronological order, but I
18 want to make sure that we talk about some of the other
19 locations, if you will.

20 We have -- they jury has already heard about a
21 place called Dragon Wok. I'm just expanding this. There's
22 a camera indicated at this Dragon Wok business?

23 A. Yes. The Dragon Wok video actually had three different
24 cameras, but probably the most relevant one is the camera
25 that's displayed there.

1 Q. And that's what been made Government Exhibit 16?

2 A. Yes, that's correct.

3 Q. The original media -- someday when the jury gets this,
4 is the original media in a more playable form of that media?

5 A. Yes, that's correct.

6 Q. When I -- I shouldn't say "media." Video?

7 A. Video, yes.

8 MR. SLAUGHTER: With the court's --

9 THE COURT: Counsel, what is the Dragon Wok
10 number?

11 MR. SLAUGHTER: 16, Your Honor. I apologize.

12 THE COURT: Okay. Thank you.

13 MR. SLAUGHTER: Government Exhibit 16. And ask if
14 I could briefly play Government Exhibit 16 for the jury.

15 THE COURT: Proceed.

16 (Video recording played)

17 BY MR. SLAUGHTER:

18 Q. This is what we have as Government Exhibit 16?

19 A. Yes. That's the video that was captured from the camera
20 indicated on the map just above the Dragon Wok.

21 Q. This is across the street from what location?

22 A. From the Cup Foods, just across the street from the Cup
23 Foods.

24 Q. I skipped over, I jumped over what is the Milestone.

25 And if you could indicate -- well, here I'm going to pull it

up. What is the Milestone?

A. So Milestone is what -- it's been previously referred to as Milestone. It's essentially the video that is being captured by one of the traffic cameras owned by the City of Minneapolis. The reason it's usually referred to as Milestone is Milestone is the more difficult version of the software used to play the video.

Q. So for Government Exhibit 14, fair to say there's actually a copy of that software, the contents, and then, frankly, a more playable version of the Milestone footage from that night?

A. Yes, that's correct.

MR. SLAUGHTER: With the court's permission, I'll play briefly Government Exhibit 14.

THE COURT: Proceed.

(Video recording played)

BY MR. SLAUGHTER:

Q. Is this what we've designated as Government Exhibit 14?

A. Yes, it is. That's a sample of the video that was captured by that traffic camera.

Q. And to be clear, this Milestone system allows someone after the fact to move in and out; is that correct?

A. It does. It has what capabilities that are usually referred to as pan/tilt/zoom. So basically the operator has the ability to move the camera.

1 Q. And that happens -- well, that can also be done real
2 time, correct?

3 A. Yes, it can.

4 Q. And so, for example, this recording shows someone moving
5 the camera at times?

6 A. Yes, it does.

7 Q. But you agree that the parties have zoomed this in I
8 think it's two evolutions before doing a more playable
9 recording off of this Milestone program?

10 A. Yes, that's correct. I believe it was somewhere in the
11 neighborhood of 150 percent, so just slightly zoomed in.

12 Q. We have a number of other what we call bystander videos,
13 and they're at Government Exhibit 17, 18, 19, and 20. Just
14 using this image, Government Exhibit 14, we can at least
15 refer to the location or their proximity to Cup Foods, if
16 you will.

17 Government Exhibit 17 is described as the Darnella
18 Frazier video. From what perspective was she recording on
19 May 25, 2020?

20 A. That recording was captured from the curb just in front
21 of the Cup Foods. So the individual was standing
22 essentially on the sidewalk while that video was being
23 captured.

24 Q. Government Exhibit 19 is described as the Genevieve
25 Hansen video. From what perspective was she recording on

1 May 25th, 2020?

2 A. Similarly, that recording was also captured from the
3 sidewalk just in front of the Cup Foods.

4 Q. Skipping one, but Government Exhibit 20 is described as
5 the Alyssa Funari video. From what perspective was she
6 recording on May 25th, 2020?

7 A. Similarly, she was also recording from the sidewalk just
8 in front of the Cup Foods building.

9 Q. I'm pulling up -- well, I hope I'm pulling up Government
10 Exhibit 1 here, just the map.

11 We have one remaining bystander video. Government
12 Exhibit 18 is described as the Alisha Oyler video. From
13 what perspective was she recording on May 25, 2020?

14 A. She was actually recording from across the street at
15 Speedway. So that, if I may --

16 Q. Please do.

17 A. -- was in the neighborhood here (indicating).

18 Q. You're indicating to the west of the Cup Foods; is that
19 correct?

20 A. That's correct.

21 Q. And you would also agree the parties -- that exhibit,
22 the audio has been redacted from that exhibit; is that
23 correct?

24 A. Yes, that's correct.

25 Q. Government Exhibit 5 is -- has been marked as "BWC

1 Lane." And you are familiar that "BWC" stands for body-worn
2 camera?

3 A. Yes, I'm familiar.

4 Q. And you would agree that Government Exhibit 5 actually
5 contains three separate video segments, portions that were
6 recorded that night by that camera?

7 A. Yes, that's correct.

8 Q. Government Exhibit 7, similarly it's entitled "BWC
9 Kueng," but you would agree that's Mr. Kueng's body-worn
10 camera footage from that night?

11 A. Yes, that's correct.

12 Q. Three separate video segments?

13 A. Yes, that also comprises three separate video segments.

14 Q. We have 9. Government Exhibit 9 is entitled "BWC Thao."
15 Mr. Thao's body-worn camera video recordings?

16 A. Yes. It does comprise four different video segments
17 that were recorded by the body-worn camera.

18 Q. Four?

19 A. Yes, sir.

20 Q. And Government Exhibit 11 is entitled "BWC Chauvin."
21 How many video segments were in that particular exhibit?

22 A. That exhibit also comprises four different video
23 segments that were recorded by that camera.

24 Q. And, finally, we have Government Exhibit 12, "BWC
25 Chang." Does that contain one video segment?

1 A. It does.

2 MR. SLAUGHTER: With the court's permission, I'd
3 like to play briefly Government Exhibit 5 just for purposes
4 of familiarizing the jury with what it looks like.

5 THE COURT: Proceed.

6 (Video recording played)

7 BY MR. SLAUGHTER:

8 Q. So I've just started Government Exhibit 5. It's just
9 the body-worn camera of Mr. Lane, correct?

10 A. Yes, that's correct.

11 Q. And I'm just pulling out information, if you will, at
12 the upper right-hand corner. It provides the date; is that
13 correct?

14 A. It does.

15 Q. In military time?

16 A. It also includes the time, yes, in military time.

17 Q. When I say "military time," it's like 2000 hours in this
18 instance?

19 A. That's correct, or approximately 8 o'clock, 8:07.

20 Q. Almost 8 o'clock -- or 8:07 and 59 seconds?

21 A. Yes, sir.

22 Q. And this Axon Body 3, what is your understanding that
23 is?

24 A. My understanding is that is the type of body-worn
25 camera, and it is a body-worn camera that is produced by the

company Axon.

Q. So there's a poly, if you will, letter and number sequence after that. What's your understanding of what that is?

A. That alphanumeric actually consists of essentially a serial number and an identifier for the specific body-worn camera in order to link that body-worn camera to the individual that was wearing it.

Q. At least at that time?

A. Yes, sir.

Q. Having -- with this still up, this exhibit, the beginning of Exhibit 5, I want to make sure that we talked about some of the time differences between these different sources of media -- video, the Milestone, the body-worn cameras, the Dragon Wok, and the Cup. And do all of these videos have the same time indicated on them at the same time?

A. Very much no. In fact, even videos that you would expect to have the same time, because they usually update themselves as they hit essentially like a router in order to transmit, even they differ sometimes by a second or two.

The digital video that was recorded by a few other sources, including the Dragon Wok video and the Cup Foods, show significantly different, in the neighborhood of minutes.

1 Q. So, for example, like body-worn cameras worn by two
2 people sitting next to one another, could they reflect
3 different times?

4 A. Yes, they could and still be -- be actually recording at
5 the same time but display different times.

6 Q. I think you've explained why that occurs, but how does
7 that occur?

8 A. Essentially what happens is it's quite a bit like when
9 your cell phone updates. You know, my cell phone being next
10 to your cell phone, they might show slightly different times
11 and it's just a matter of when that cell phone is updating
12 itself as it's hitting a cell phone tower.

13 The same thing happens with body-worn cameras,
14 where when they hit off of a router or something like that,
15 it will update. And so you would normally expect to see
16 slight differences in the timing of the body-worn cameras.

17 Q. And so there are differences just across these different
18 media when it comes to the -- video when it comes to the
19 time?

20 A. There are, just in the matter of seconds.

21 Q. Well, let's talk about this. How does a person -- how
22 do you make a side-by-side, like a synchronized digital
23 video exhibit?

24 A. The first thing for me is to ignore that time and date
25 stamp, because ultimately I know, having done this for so

1 long, that often those time and date stamps can't be
2 entirely trusted.

3 Really what I'm looking at doing when
4 synchronizing video is finding events in common, either
5 audio or video cues, like a car door closing is great for an
6 audio and video cue because you can both hear it and see it.
7 And if I can hear it on one video segment and see it on
8 another video segment, I can line those up and I know that
9 those videos are playing synchronized.

10 Q. How long has this synchronization, if you will, or
11 side-by-side -- the making of side-by-side video exhibits,
12 how long has that been possible?

13 A. Really the ability to synchronize video has been around
14 as long as video has been made. I mean, if you think about
15 making something like a major motion picture, if you want to
16 take feeds from two different cameras in order to get
17 different actor's viewpoints, essentially what you are doing
18 is the same thing. You are looking at those common events
19 and saying, okay, this is where my common event is and going
20 in between those two videos.

21 Q. So when you say "synchronization," is it really just
22 making two videos play at the same time?

23 A. That's exactly what it is. It's a matter of -- if I
24 were to role up two TV monitors, we could do the same thing
25 if I knew exactly when to hit play on each one.

Me making a synchronized video just kind of takes the guesswork out of it here in court so that you can see what's happening on two different media -- two different video sources at the same time.

Q. Well, have you done this before for court?

A. Yes, I have.

Q. How many times?

A. I've done this dozens of times in order to produce exhibits to show what's happening on different cameras at the same time.

Q. And you touched upon this a little bit, but in the realm of the forensic skills necessary, how difficult is it to create, like, side-by-side videos like this?

A. Ultimately this is probably one of the easiest things I do because it is a matter of just finding those synchronized events on two different media sources and essentially placing a digital Post-It note and saying start play on these two items at the same time.

Q. So why do this, why create side-by-side video exhibits?

A. In my opinion, the reason to do this is just to give context to the video. So things like incorporating the Milestone video gives us a great overall perspective of what's going on and where each individual is at specific times. And then incorporating additional video sources, then the Milestone gives that context for those additional

sources.

Q. Well, aren't multiple screens confusing to people?

A. No. Honestly, in my opinion, I think that people have seen this often enough that it actually makes complete sense. It's things like watching -- you know, watching a football game, which I don't know about you, but I did over the weekend a little bit, being able to see things like picture in picture. It's just synchronized video. It's the ability to watch two different cameras at the same time.

Q. Well, why would using -- is this your job, is this one of the things you do for purposes of your role in the FBI?

A. Yes, it is.

Q. Why would using like a side-by-side video be better or more efficient than just looking at two separate videos back and forth?

A. Ultimately it's just for ease of view. I mean, having the ability to look at things side by side really gives me that overall perspective of what's happening from different camera views rather than having to watch one and then queue up the next one and figure out where that point in time is and going back and forth. So it's easier and ultimately faster to watch them side by side.

Q. Well, I should say faster than what? Than looking at a single view?

A. Faster than looking at a single view and having to go

1 back and forth in between those single views in order to
2 figure out where you're at and then play back the video.

3 Q. Well, let's talk about the combinations that you made in
4 this matter.

5 A. Yes, sir.

6 Q. You made several different combinations from what are
7 now admitted exhibits, correct?

8 A. Yes, that's correct.

9 Q. And -- well, we have 12 such exhibits; is that correct?

10 A. Yes, sir.

11 Q. Or proposed exhibits for identification?

12 A. Yes, sir.

13 Q. What types of combinations did you make?

14 A. I made combinations comparing the Milestone video to
15 things like the individual body-worn cameras, comparing the
16 body-worn cameras -- or synchronizing the body-worn cameras
17 with some of the bystander videos, as well as things like
18 putting the body-worn cameras together so that you could see
19 the totality of the events from individual officer views.

20 Q. Well, let's talk -- let's kind of break it down a little
21 bit. You made a combination of the Thao body-worn camera
22 and the Frazier video. Why did you do that?

23 A. What stood out for me is combining the Thao body-worn
24 camera and the Frazier video really gave, because there was
25 dialogue between the two, it gave both sides of that

1 dialogue so that one could see --

2 MR. ROBERT PAULE: Your Honor, pardon me.
3 Objection. May we sidebar?

4 THE COURT: Members of the jury, this is the first
5 time you've had this sidebar situation come up. You are
6 going to hear an awful noise in a few minutes. It's just
7 the way it is. But the reason for this is just simply that
8 counsel deserves to discuss matters of law with me; and if
9 we wanted you to hear it, we would tell you, but that's just
10 the way it is. We have to do this every once in a while.

11 Okay.

12 **(At sidebar)**

13 THE COURT: Proceed.

14 MR. ROBERT PAULE: Thank you, Your Honor. It's
15 Robert Paule.

16 I would note I objected to this. I object on a
17 couple grounds. First of all, they're discussing evidence
18 that has not yet been admitted, in other words, the context
19 and the content of the video.

20 The second thing is I'd object under Federal Rule
21 of Evidence 403. I think to some degree this is evidence
22 that is misleading the jury, because I could use the phrase
23 it gives context to something when in reality what I'm doing
24 is I'm emphasizing a particular part of the evidence. With
25 regard to this specific piece of evidence, it would imply

1 that my client is able to view everything that is going on
2 from the exact opposite perspective of his.

3 And while I appreciate the government has stated
4 they don't intend to argue these points, they're still
5 presenting evidence which is every bit as prejudicial, just
6 not as direct.

7 MR. SLAUGHTER: Your Honor, can I be heard? I
8 want to make sure I can be heard over the microphone.

9 THE COURT: I hear you, yes.

10 MR. SLAUGHTER: Just in response, Your Honor --

11 THE COURT: What's the exhibit number that we're
12 dealing with here?

13 MR. SLAUGHTER: This is Government Exhibit 28,
14 Your Honor.

15 THE COURT: Okay.

16 MR. SLAUGHTER: Thao/Frazier -- proposed
17 Thao/Frazier video. Just in response -- and obviously
18 there's been a general 403 discussion when it comes to these
19 exhibits.

20 I'm just trying to lay some foundation with regard
21 to these before trying to offer them. I recognize counsel's
22 concerns, but I'm just asking her why she made the exhibit
23 itself. She's described herself, her experience, and,
24 frankly, her extensive background when it comes to this.

25 And the subjects that counsel are talking about

1 are all the subject of potential cross-examination and, of
2 course, the limiting instruction that I know we're going to
3 be potentially dealing with.

4 But I'm just trying to have her describe why she
5 made that exhibit. I anticipate doing the same thing for
6 each one of these exhibits briefly, briefly, for purposes of
7 foundation to the point where I'm going to offer them.

8 THE COURT: Okay. First of all, the foundational
9 side of this, I think that's just exactly what counsel is
10 doing. And you will use -- she will use the names of the
11 defendants and names of witnesses, et cetera, but at this
12 point it's not into the subject matter.

13 Then we turn next to the 403 subject. The court
14 is very concerned about the 403 subject and the appropriate
15 perspectives. We won't do that until we get down to the
16 point of actually concerning ourselves with the viewing of
17 the documents. So I'll defer a ruling on that at this
18 point.

19 With that, I think we can proceed.

20 MR. SLAUGHTER: Yes, Your Honor.

21 **(In open court)**

22 THE COURT: Proceed, Mr. Slaughter.

23 MR. SLAUGHTER: Thank you, Your Honor.

24 BY MR. SLAUGHTER:

25 Q. So we briefly talked about what -- we hadn't gotten to

1 say it yet on the record, but what was Government
2 Exhibit 28; is that correct, the Thao/Frazier video?

3 A. Yes.

4 Q. We also talked --

5 THE COURT: Lights.

6 BY MR. SLAUGHTER:

7 Q. You've made a number of --

8 MR. SLAUGHTER: I'm sorry, Your Honor?

9 THE COURT: I was talking to Ms. Magee.

10 BY MR. SLAUGHTER:

11 Q. You made a few other combinations; is that correct?

12 A. Yes, that's correct.

13 Q. While we're sticking with just the combinations with
14 body-worn camera, did you make a couple of other
15 combinations of body-worn camera with the Frazier bystander
16 video?

17 A. I did, with both Mr. Kueng's and Mr. Lane's.

18 Q. And those are, just for the record, Government -- for
19 identification, Government Exhibit 23 and Government
20 Exhibit 24?

21 A. Yes, that's correct.

22 MR. GRAY: Excuse me. Which one is which?

23 BY MR. SLAUGHTER:

24 Q. 23, would that be Mr. Lane's BWC and Ms. Frazier's
25 video?

1 A. I believe that's correct, yes, sir.

2 Q. And Government Exhibit 24, Mr. Kueng's BWC and
3 Ms. Frazier's video?

4 A. Yes, sir.

5 Q. Why make the two different once?

6 A. Essentially because both of those give timing to
7 Darnella Frazier's video because it in itself does not have
8 a time stamp, as well as to compare the view of each officer
9 as Ms. Frazier's video was recorded.

10 Q. Government Exhibit 21 is described as the Milestone and
11 Frazier video and audio. Why did you create that one?

12 A. I created that one because it gave -- as I said, the
13 Milestone gives a great overall view as showing where each
14 individual was during the incident, and having the ability
15 to see that and give timing information to the Frazier video
16 when it comes into play was helpful for me.

17 Q. There's Government Exhibit 34 and 35. You mentioned
18 before the side-by-side body-worn camera views?

19 A. Yes, that's correct.

20 Q. Is that Mr. Kueng and Mr. Lane's body-worn cameras?

21 A. Yes, both comprise both Mr. Kueng and Mr. Lane's
22 body-worn cameras side by side. One is being played back
23 with Mr. Kueng's audio and the other is played back with
24 Mr. Lane's audio.

25 Q. Is 34 Mr. Kueng's audio and 35 Mr. Lane's audio?

1 A. Yes, that's correct.

2 Q. Well, why do that? Why have the perspective of the two
3 BWCs across one another?

4 A. Being able to see those two videos at the same time
5 really gives the totality of experience of each individual
6 officer during the event, as well as being able to see the
7 restraints being placed on Mr. Floyd at various times
8 throughout the course of the incident.

9 Q. You made another Milestone/bystander combination on
10 Government Exhibit 25. Why make another one when you did
11 one with Ms. Frazier?

12 A. I'm sorry. Can you give me a little bit more context
13 with Exhibit 25?

14 Q. Oh, I apologize. We haven't talked about the first one.

15 A. Okay.

16 Q. Did you -- well, first, let's just go with that. The
17 combined Milestone and Oyler video/audio -- or I'm sorry,
18 just the video, that's Government Exhibit 25. Why did you
19 make that one?

20 A. Because they were coming from similar perspectives but
21 essentially slightly different. So the Milestone was from
22 up above, and the videos recorded by Ms. Oyler were from
23 street level. It just, again, gave context to each of those
24 sets of video with the overall view recorded by the
25 Milestone video.

1 In addition to which the videos that were recorded
2 by Ms. Oyler did not have time stamps either, and so it had
3 that ability to place them in proper context in relationship
4 to the time that they were recorded.

5 Q. So that's the reason for 25 in addition to 21 or
6 separate from 21 --

7 A. Yes, sir.

8 Q. -- Government Exhibit 21 and 25?

9 A. Yes, sir.

10 Q. You have -- we had another, if you will, Thao BWC and
11 Hansen bystander video that you created; is that correct?

12 A. Yes, that's correct.

13 Q. So it's separate and apart from the Frazier bystander
14 video combination with Officer Thao's BWC?

15 A. Yes, that's correct.

16 Q. Why did you make a separate one of that?

17 A. Because Mr. Thao and Ms. Hansen had dialogue between
18 each other. Watching those two side by side gave the
19 ability to see both sides of that conversation.

20 THE COURT: Counsel, the number on that one was
21 what?

22 MR. SLAUGHTER: Government Exhibit 33, Your Honor.

23 THE COURT: Thank you.

24 BY MR. SLAUGHTER:

25 Q. You had the combined Milestone and Oyler video at

1 Government Exhibit 25. You also made a combined Milestone
2 and Officer Thao's BWC at Government Exhibit 27. Why did
3 you make that comparison or create that side-by-side?

4 A. Essentially making that comparison allowed me to be able
5 to see, again, that overall with the Milestone of where the
6 individuals were at various points in time, particularly in
7 relationship to where the bystanders were as Mr. Thao had
8 interactions with them.

9 Q. You made a number -- and we talked about it a little
10 bit. You had exterior, if you will, business cameras with
11 combinations of things as well in addition to the Milestone;
12 is that correct?

13 A. Yes, that's correct.

14 Q. Government 32 is the Kueng BWC and the Dragon Wok video.
15 Why did you make that one?

16 A. Because there were some interactions in between the Cup
17 Foods store and the Dragon Wok, closer to the Dragon Wok,
18 that gave the ability to see what those interactions were,
19 particularly as they were recorded by the Kueng body-worn
20 cameras.

21 Q. A similar question for Government Exhibit 30. The
22 combined front Cup exterior -- we saw it looking out --
23 combined with Officer Thao's BWC, how is that helpful?

24 A. Similarly, it gives a little bit of a different
25 perspective than the Milestone. So it gives the perspective

1 from just in front of the store and combining that and where
2 the bystanders were standing compared to the body-worn
3 camera worn by Mr. Thao.

4 Q. And I should make clear, Government Exhibit 30, that
5 combination, was there -- it starts even with a disclaimer
6 because of the sizing on the screen; is that correct?

7 A. Actually, it starts with a disclaimer because of the
8 timing on the Cup Foods. So most of the video sources had
9 what's called a regular frame rate, where it plays back
10 regularly. Unfortunately, with digital video recorders that
11 are used within security applications, often these have
12 what's called variable frame rates, where it doesn't play
13 back quite as regularly. And so I had to make some
14 adjustments to the timing to the Cup Foods' exterior video
15 in order to make it play back in real time.

16 Q. Government Exhibit 31, that's a combined front Cup
17 exterior with the Frazier video. Why did you make that one?

18 A. Once again, it gives that synchronized video between the
19 two, between the Frazier and the front Cup exterior, and it
20 gives that perspective of seeing where everyone is at
21 various times as the Frazier video is being recorded.

22 Q. Is it common to make, like, this number of combinations
23 when it's this number of video sources?

24 A. Absolutely.

25 Q. So -- and I should ask you: Some of these videos have

1 audio sources; is that correct?

2 A. Yes, that's correct.

3 Q. How is that shown or how is it made clear to someone
4 seeing it, that there's a change in audio or the source of
5 audio?

6 A. What I did was in each case I indicated on the file name
7 where the audio was being recorded or which recording device
8 was capturing the audio.

9 In addition to that, you will see on multiples of
10 the synchronized videos that there is essentially like a
11 little audio symbol and that denotes which recording device
12 is capturing the audio that you can hear.

13 Q. Well, to be clear, as to each of these side-by-side
14 proposed exhibits, have there been any additions or
15 deletions, alterations to the content from the original
16 media that have been entered into evidence here already
17 today?

18 A. Absolutely not.

19 MR. SLAUGHTER: With that, Your Honor, the
20 government offers into evidence, and I think I have the
21 list, I can go through it, but Government Exhibit 21, 23,
22 24, 25, 27, 28, 30, 31, 32, 33, 34, and 35, Your Honor.

23 THE COURT: They are offered. Are there
24 objections?

25 MR. PLUNKETT: Objection, Your Honor, 403.

1 THE COURT: Okay. Objection has been made. We'll
2 discuss it at sidebar.

3 **(At sidebar)**

4 MR. SLAUGHTER: I'm here, Your Honor.

5 MR. PLUNKETT: Tom Plunkett is here, Your Honor.

6 THE COURT: Okay. Proceed.

7 MR. PLUNKETT: Thank you, Your Honor. Your Honor,
8 I've put in a written motion on this. I think the court is
9 pretty familiar with the issue that I'm concerned about, and
10 it really goes to giving a completely different perspective
11 to the jury than any of these gentlemen could actually see
12 and appreciate, especially, but not limited to, the videos
13 that combine the Frazier with those body-worn cameras.

14 I think that the videos -- those videos are
15 particularly troubling because the people even making the
16 videos couldn't even see Kueng and Lane, and Lane and Kueng
17 couldn't see what was going on on the other side of the car.
18 They had absolutely no appreciation of that. They couldn't.
19 They couldn't see it. And a large part of it they couldn't
20 even hear it because of the struggles and other things that
21 were going on.

22 This is going to cause the jury to look at these
23 videos and develop a belief, albeit extremely false. Even
24 if it's not a belief, it's going to be a confirmation bias
25 that this is going on while our clients were there.

1 Now, those are the ones that are especially
2 troubling. That doesn't mean that the other combination
3 videos are any less troubling when we have the Dragon Wok --
4 pardon me, not the Dragon Wok, the Milestone combined with
5 Oyler.

6 Now, that one is not as bad because they are on
7 the same side, but, again, it is a completely different
8 perspective. And the Milestone video is showing a much
9 broader range, and the Oyler video is really not that good
10 of a video, but it is from a different angle.

11 I think -- I could go on and on on this, but, you
12 know, the bottom line is this is tremendously prejudicial.
13 We can't unring this bell. This is going to go into the
14 jury room, and these good and true jurors are going to be
15 looking at this seeing Derek Chauvin torturing a man at the
16 same time that they're looking at, you know, what my client
17 is looking at and they are going to attribute that knowledge
18 to my client. It's not just my client. Mr. Lane and
19 Mr. Thao too and their respective videos.

20 Thank you, Your Honor.

21 MR. ROBERT PAULE: Your Honor, Robert Paule. May
22 I add something?

23 THE COURT: Certainly.

24 MR. ROBERT PAULE: Thank you, Your Honor.

25 I would note that what the government is proposing

1 doing is adding a total of 12 additional videos of
2 undetermined amount of minutes being played. And I would
3 like to object, in addition to the things that Mr. Plunkett
4 has said, to the cumulative effect of this.

5 And I would point out a couple different things.
6 Essentially, it's turning videos into a tidal wave of
7 evidence that's just repetitive. It's just from different
8 angles.

9 I would note that this witness has used the word
10 "context" to describe the advantage of these approximately a
11 dozen times. She also talks about perspective. But the
12 reality is this is a sheep in wolf's clothing -- or wolf in
13 sleep's clothing, excuse me, because it allows the
14 government the opportunity to just play and play and play
15 these videos over and over again.

16 So I would join in that objection and add that
17 particular objection.

18 MR. GRAY: Your Honor?

19 THE COURT: Thank you.

20 Mr. Gray.

21 MR. GRAY: Earl Gray, Your Honor. Also, it's
22 totally unfair because these combination videos are not
23 heard or seen by my client. I mean, maybe one or two at
24 certain times. But when you've got combination videos like
25 this, you have total unfair evidence to my client, who has a

1 body-worn camera and he's paying attention to what he's
2 doing and not all of these other cameras combined with that.
3 It's unfair. It's Rule 403.

4 Thank you.

5 THE COURT: Okay. Thank you.

6 Mr. Slaughter?

7 MR. SLAUGHTER: Thank you, Your Honor.

8 I'd like -- first, the witness has testified as to
9 the actual probative value of these types of exhibits, and
10 they are for purposes of providing value.

11 And during each one of the opening statements you
12 heard the respective counsel talk in terms of relying on the
13 video, relying on the evidence. Mr. Paule even talked in
14 terms of, you know, what happened before the Frazier video,
15 things of that nature. Mr. Plunkett, I know, relies -- or
16 he said on multiple occasions the fact that what is seen is
17 perception.

18 But going just to that issue alone, the issue as
19 to what is being heard, what is being seen by the
20 bystanders, what is being said by the bystanders, and what
21 they heard by the officers on their body-worn cameras and
22 how they react to what they are hearing, in combination that
23 is of relevance, particularly the timing, Your Honor.

24 These videos are common. This is not something
25 that is new or unique. And the instruction can be very

1 clear to the ladies and gentlemen of the jury when it comes
2 to the combinations themselves.

3 We are trying to facilitate things as opposed to
4 make things be heard over and over again. In fact, I have
5 an anticipated presentment involving these -- a limited
6 number of exhibits that would be very short and actually
7 less than 90 minutes, approximately, if we were able to
8 accomplish that. It would be much faster with regard to the
9 presentment of this overall media -- and the fact of the
10 matter is counsel, their objection --

11 THE COURT: Counsel, let me interrupt. You are
12 talking about the timing of it. You say that you could show
13 these in 90 minutes. If you look at Exhibit 21 itself, that
14 is well over one-hour long.

15 MR. SLAUGHTER: Yes, Your Honor.

16 THE COURT: That is in evidence as -- one of these
17 combination things, the entire thing is in evidence, not
18 this.

19 Now, if it were edited down to, you know, a
20 two-minute segment, I might think differently about this,
21 but I can't see putting in an exhibit that's over an hour
22 long and telling the jury that, well, two minutes is enough.
23 They will look at the whole thing.

24 MR. SLAUGHTER: Well, Your Honor, and the reason
25 for the length of --

1 THE COURT: I'm having trouble hearing you.

2 MR. SLAUGHTER: What's that?

3 THE COURT: Take your mask off. That will help.

4 Okay.

5 MR. SLAUGHTER: Can you hear me now?

6 THE COURT: Yeah, I can hear much better.

7 MR. SLAUGHTER: Your Honor, I didn't press further
8 or go further with the witness, but we can have the witness
9 describe how we built a window of time of one hour for the
10 combination, especially with respect to the body-worn
11 cameras, on purpose in -- frankly, in an effort to avoid any
12 objection from defense counsel that we were missing
13 anything. That actually came up in conference with counsel
14 in December when we were trying to have these finalized.
15 The combined videos themselves are longer basically because
16 defense counsel wanted to make sure that they were of a
17 certain length, and that's when we were having a
18 conversation about the combined videos themselves.

19 But we would point to certain increments of time.
20 I am not proposing to play the entirety of all these videos
21 at all, Your Honor. We would point to a particular video.

22 THE COURT: Counsel, first of all, they are
23 duplicative because you already introduced every one of
24 these by stipulation. So now we're talking about -- about a
25 second bite of the same apple. That's a concern.

1 The second concern I have is a jury should decide
2 the case based upon the facts that everybody knows is
3 evidence in the case. And to say you are going to have just
4 these few minutes but introduce these long, long exhibits,
5 long videos, at that point the defendants, the witness, the
6 court has no idea what the jury would be deciding the case
7 on if they have all of that in their -- in their background
8 in their deliberation room.

9 MR. SLAUGHTER: Your Honor, if we can narrow the
10 window of time for purposes of these combined videos
11 themselves, would that assuage the court's concerns? And
12 there's really, in reality, a narrower window of time when
13 it comes across all of these. The only reason they were
14 extended was because of that.

15 THE COURT: Counsel, let me talk about another
16 subject. Ms. Meline talked about with some officers, their
17 body-worn cameras, there were three segments, sometimes four
18 segments, sometimes one segment. How do we have any idea
19 what that is?

20 MR. SLAUGHTER: All of them are related to time,
21 Your Honor, so the --

22 THE COURT: How would I know? How do I know at
23 this point what's --

24 MR. SLAUGHTER: It's on the recording itself, Your
25 Honor. The time is indicated when the body-worn cameras are

1 combined with anything. The actual military time is
2 recorded.

3 THE COURT: Counsel, I guess you are right about
4 that, but at the same token, when that camera is going by
5 and that scene is going by, how does one recognize this is a
6 place that -- this has changed from this subject to that
7 subject?

8 MR. SLAUGHTER: It's only one thing, Your Honor --
9 I'm sorry. One moment, Your Honor.

10 (Pause)

11 MR. SLAUGHTER: The body-worn cameras themselves
12 are -- other than the two different officers being combined,
13 the body-worn cameras are combined with separate video
14 sources, so it's very clear and it is made clear in each one
15 of the exhibits. They are described very clearly that's the
16 source of the media itself.

17 THE COURT: Okay. Anything further from the
18 defense?

19 MR. PLUNKETT: Nothing from Tom Plunkett, Your
20 Honor.

21 THE COURT: Okay. Counsel, I'm going to at this
22 time receive -- and I need to -- excuse me a minute.

23 (Pause)

24 THE COURT: I'm going to at this time overrule the
25 objection as it relates to Exhibit No. 21, the combined

Milestone and Frazier video and audio. I do so because the Milestone camera gives an overall view of the area involved in the subject and context can be placed with that Frazier video. However, by doing that, I'm suggesting that the Frazier video and audio will be -- that was received in that earlier document should be removed.

The court will make the same ruling with respect to the combined 22 -- no. I'm sorry. The combined Milestone 25 with the Oyler video and 27, the combined Milestone and the BWC video, I take that of Mr. Thao, I guess that is, I will receive that.

I would defer any further rulings with respect to any other combined videos to know specifically what the -- what portions would be shown or should not be shown and counsel for the defense will be made aware of that.

But, in the meantime, I am -- if the entire matter is produced, then I'm going to sustain the balance -- I would then sustain the balance of the combined documents as being prejudicial, being duplicative, and in violation of 403.

With that --

MR. SLAUGHTER: Your Honor, if I may, before I proceed with anything, I want to make sure I'm clear on the numbers. You are --

THE COURT: I'm receiving 21 --

1 MR. SLAUGHTER: 25 and 27?

2 THE COURT: -- 25 and 27 at this point in time.

3 MR. SLAUGHTER: None of the other combined?

4 THE COURT: None of the other combined are
5 received at this time.

6 **(In open court)**

7 THE COURT: Members of the jury, Exhibits No. 21,
8 25, and 27 are received at this time pending further
9 discussion.

10 Proceed.

11 MR. SLAUGHTER: One moment, please, Your Honor?

12 THE COURT: Certainly.

13 MR. SLAUGHTER: Your Honor, if I may confer with
14 counsel?

15 THE COURT: You may.

16 (Counsel confer)

17 MR. SLAUGHTER: I apologize, Your Honor. In
18 conferring with counsel, I'm going to play what is
19 Government Exhibit 5, the first segment of Government
20 Exhibit 5.

21 THE COURT: Very well. Proceed.

22 MR. SLAUGHTER: It's the Lane body-worn camera.
23 If we could dim the lights a little bit, please, Your Honor?

24 THE COURT: Counsel, when you play that, if you'd
25 be kind enough to help me with where the segment business

comes into play, so I could understand it a little better.

MR. SLAUGHTER: Your Honor, the segment itself is in the underlying raw media -- I'm sorry, the raw video. There are three separate sections on the underlying exhibit that's on the disk itself, the drive that will go to the jury.

THE COURT: Okay.

MR. SLAUGHTER: For purposes --

THE COURT: Just point it out to me.

MR. SLAUGHTER: For purposes of the time, we have the time indicated on the body-worn camera and it begins at the time that's indicated.

THE COURT: All right.

MR. SLAUGHTER: Playing what is Government Exhibit 5, Your Honor.

THE COURT: Proceed.

MR. SLAUGHTER: At this point it begins at 28 -- it's at :08 and rolling, and this is approximately 34 minutes, Your Honor.

(Video recording played)

MR. SLAUGHTER: Your Honor, for the record, I paused this video at 20:34:16 on the body-worn camera footage.

I don't know if the court is inclined to have another video yet this afternoon or if this -- coming up on

1 the 5 o'clock hour or not.

2 THE COURT: Well, are we done with this one?

3 MR. SLAUGHTER: At this point in time. I'd
4 continue -- there is additional, obviously, additional media
5 we can play it through, if the court is so inclined, instead
6 of -- and having it play through. Of course, this exhibit
7 will be used during later testimony as well.

8 THE COURT: Well, I -- it's up to you. If we
9 don't play beyond this, that's fine. If you want to finish
10 the entire thing, that's fine too. But anything that's not
11 shown to the jury is not going to be permanently kept in the
12 evidence.

13 MR. SLAUGHTER: Not with this particular witness,
14 Your Honor.

15 THE COURT: Okay. Then we'll stop at this point.

16 MR. SLAUGHTER: For this particular exhibit, Your
17 Honor.

18 THE COURT: Yeah.

19 MR. SLAUGHTER: We will play a portion of the
20 Kueng body-worn camera, if the court is so inclined. I
21 don't know if it's -- I know it's a quarter of 5:00.

22 THE COURT: Well, how long is the portion you want
23 to play?

24 MR. SLAUGHTER: It's approximately 20 minutes,
25 Your Honor.

1 THE COURT: Yeah, maybe we should stop then.

2 Okay. Can we have on the lights, please, and take
3 down the exhibit, please.

4 Members of the jury, we are going to stand in
5 recess at this time until tomorrow morning. We will
6 commence again tomorrow morning at 9:30 a.m.

7 I would caution you during -- again, during the
8 course of the evening not to have any discussions amongst
9 yourselves, with other persons with respect to the case.
10 Please don't read or listen to any media accounts with
11 respect to the case.

12 And with all of that, have a good evening.

13 One other thing. Don't carry out any personal
14 investigations. You don't need to go over to 38th and
15 Chicago. You don't even need to stop at Cup Foods tonight.
16 You can go to Cub Foods, but not Cup.

17 Okay. With that, have a good evening. We will
18 see you tomorrow morning at 9:30. The jury may be excused.

19 (Jury excused)

20 **IN OPEN COURT**

21 **(JURY NOT PRESENT)**

22 THE COURT: Counsel, why don't we gather at 9:00
23 or just a few minutes after 9:00 to further discuss some of
24 these items. Thank you.

25 MR. SLAUGHTER: Understood, Your Honor.

1 THE COURT: See you tomorrow.

2 You go ahead. I have to clean up some things
3 here, so we're in recess. We're done.

4 (Court adjourned at 4:45 p.m., 01-24-2022.)

5 * * *

6 I, Renee A. Rogge, certify that the
7 foregoing is a correct transcript from the record of
8 proceedings in the above-entitled matter.

9 Certified by: /s/Renee A. Rogge
10 Renee A. Rogge, RMR-CRR
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